

THE  
COUNTRY  
JUSTICE

CONTAINING  
THE PRACTICE OF  
The Justices of the Peace out  
of their Sessions

Collected for the better helpe of such Iustices  
as have not been much conversant in  
the studie of the Lawes of  
this Realme. 14<sup>th</sup>. 17<sup>th</sup>. 18<sup>th</sup>.

Now the sixth time published, revised, in many things  
corrected, and much enlarged.

By Michael Dalton of *Lincolnes Inne*, Esquire,  
- *Sollicitor of the Chancery*

Justice is the Basse of Peace, and the maine  
Honour, &c. *John Mordaunt*

*Cum Privilegio*

LONDON

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MAINTENANCE

OF

... ..



T O

The Right Honourable, Sir *Henry Montague*, Knight, Lord chiefe Iustice of the Pleas, holden before the Kings Majestie.



Y Honourable good Lord,

After I had spent many yeeres in the study of the Lawes of this Realme, and was called to the ministration of Iustice in my Countrey, I thought it not sufficient to apply my selfe onely to the precepts and directions of former times; but with all, to observe such new accidents, as daily happened within mine experience, thereby the better to performe the duties of my place; Whilist I thus endeavoured my selfe, I observed that Iustices of Peace in their places, grew in neglect, and many times were over-swayed by superiour solicitations, yea, and sometimes disgraced, in such sort, as could have beene content rather to have sit downe in private quiet, than with care, studie and paines to incurre such hazards and discontentments. But againe, whilst I stood thus doubtfull, it pleased the foontaine of Iustice, (I meane his Royall Majestie) so to countenance and grace, yea, to shew his Majesties high esteeme of this authority of Iustices of Peace, not onely (in his Majesties late Speech in the Star-chamber,) prizing and valuing them with the nearest display about him; But (to the great honour of this Realme, and of the government thereof) sithence also establishing this countrey government by Iustices of Peace, in his Majesties native Countrey of Scotland: so as me thought, I saw the current of Iustice to runne cleare and comfortably thorow the Land, and my selfe to receive new vigour and encouragement; whereupon I began to recollect my confused

Observations, willing for my private help and better readinesse, to digest them into some order and method, such as my understanding could best contrive. Thus prepared, I yet made question with my selfe, whether it were better to adventure the publishing of these my labours, or to keep them by me only for my owne private use. In this unsetled consultation, being brought unto your Lordship, by my good friend, (who also discovered to your Lordship this my labour) and finding your Lordship favourable to respect me, and it, I tooke heart and encouragement to put the same in print, after that I had obtained (according to my humble suit) your Lordsh. favour for allowance and patronage thereof.

Now it remaineth further to crave of your Lordship not onely for my selfe, but for all that shall uprightly labour in this Iusticiary course, that wee may receive from your Lordship such encouragement and countenance, as that we may couragiously and constantlie undergoe the charge imposed upon us, without feare of oppositions, or other uncomfortable disturbances. So by your Lordships favour and meanes, shall justice bee the more duelie administred, and his Majesties peace be the more firmly maintained, to the honour and safetie of the Kings Majestie, and the good and peaceable government of all his Subjects, and so his Majestie will no doubt proceed (as he hath begun) yet still to encrease your Honour, for your care in honouring him, and his Royall Throne thereby; And the people, who shall feele the goodnesse and benefit of your zeale of justice, will heartilie and joyfullie pray for your happiness; And God, beholding how you make justice and peace to goe together, will according to his abundant Mercies, and infallible Truth, give you the everlasting reward of justice and peace: For all which I will continually pray, and besides, rest

Your Lordships in all humilitie,  
and dutie, ever to be commanded,

MICHAEL DALTON.

To the Right  
VVORSHIPFULL

Sir JAMES LEE, Knight, the Kings  
Majesties Atturney of his Court of Wards and Li-  
veries, and to the right Worshipfull, and my very  
good Uncle, THOMAS SPENCER, Esquire,  
and to the residue of my Masters of

*Lincolnes Inne.*



**I**T may peradventure seeme strange that after so many learned Writers in this kinde; I (a man of so weak parts) should presume to offer to the view of the World, a Work of this nature: Yet my Reasons being considered with indifferent favour, I hope to be excused, not onely with you, but with all others that be Lovers of their Country, and seeke the peace thereof. I confesse my selfe a long, yet an unprofitable Member of your Honourable Society; but seeing that my calling is to a Country life, and considering that he which is of the meanest condition, and that hath the smallest talent, may not (without just reprehension) retire himselfe so to his private pleasure, or profit, as that hee should neglect to shew some fruit and token of his love to his Countrey (lest therin the Heathen Philosopher might justly condemne him; who said, *Non solum nobis nati sumus, sed partim patrie. &c.*) I have bin the bolder, according to my place, small power and capacity, to offer this my small Mite into the Treasury of my Countrey. This Worke (whatsoever it be) being written first as private Notes for my particular helps in this businesse, wherewith my self and many others ate daily employed, and on worke, without yeilding any pleasure or profit at all to us, otherwise then for the publike good.

The sweet of like Labours, you my *great Masters* (which I doe most gladly behold) do from time to time reap more fully, rising daily to



## THE EPISTLE.

great Honour and Wealth, through your Wilsdomes, Deserts, and great pains ; That which remaineth to us Countrey Justicers, ( for the most part ) is the wearying of our selves , the spending of our time, wits, and estates , *Vt alii inde pace fruuntur*, and requited many times not only with much evill will, from or by the meanes of such as wee have in Justice to deal withall , but oftentimes also rather disgrated then countenanced or encouraged by some in higher places.

I speake not this without acknowledging it to be both just and meet, that the actions and proceedings of the Justices of Peace should be well and duly looked into, and themselves worthy to be punished , when through malice , or other corruption , they sha'll doe unjustly : But if through unwilling ignorance they happen to erre and doe amisse, they are rather to be better informed, then ill intreated : *Nemo nascitur sapiens , & humanum est errare.*

I am bold to write unto you, my worthy *Masters*, and Worshipfull Friends, and the rest of this Honourable Fellowship, knowing that there be many amongst you , daily rising to great places , whose honour it will be to maintain the life of the Law, and Justice of the Realme, with the excellency thereof, in causing due execution thereof to be had and done ; redressing the abuses and defects thereof, and encouraging such as shall carry themselves *juste, fideliter, & sincere* : Againe, that there be many among you, of great Learning and Judgement, by whom this my unperfect work may, yea, and I hope shall be more polished and perfected. And seeing some others amongst you, whose fortunes prove (as mine doth) to withdraw themselves into their Countries, I would gladly incourage them to imploy their better talents to the common good.

I acknowledge there be divers other Books in this kinde , more Learned and Methodicall ; but withall I observe the businesse of the Justices of Peace , to consist partly in things to be done by them out of their Sessions, (and sometimes privately ; and peradventure upon the sudden , without the advice or association of any other) and partly at their Sessions of the Peace: Of things of this last kinde, I purpose not in this Treatise to meddle, for that at such publike meetings and assemblies they are far more able to direct themselves ; but for the private and suddden helpe of such Justices of peace, who peradventure have not read over the former Writers, and if they have , yet the multiplicity of statutes (whereupon the office and private practice of Justices of Peace doth principally consist) being such , and at every Parliament so altered , by expiration , discontinuance, and otherwise, as that it is a worke very hard and laborious, for Gentlemen not conversant in the study of the Laws ( although otherwise,

very

## THE EPISTLE.

very industrious to proceed as by the Commission they ought and are prescribed, scz. *Secundum Leges, & Statuta Regni*: upon which considerations, and for their ease principally, I have published this Work; knowing that there be divers both Honourable and Worthy persons in the Country, of whom some for want of knowledge of the many and particular Statutes in force, and tediousness of the study of them, doe seek to be exempt out of the *Commission of the Peace*; others being in, doe forbear to meddle, or meddling, doe not that good service therein which they are desirous to doe. I have therein endeavoured to set down things so plainly, and briefly as I could, with reference to the Statutes abridged, whereby the Reader may the better resolve, and satisfie himselfe what hee ought to doe in every particular almost, that shall come before him, or them, out of their generall Sessions of the Peace. And yet for that in cases of ambiguity, *Satius est fontes petere quam sectari rivulos*, I could wish all Justices of the peace to have ready by them the Statutes at large, as well as the Abridgements; and to use this booke, or the Abridgements of the Statutes, as Tables, and briefe memorials, but to trust and ground themselves chiefly upon the bookes at large.

Co. 13 117

It resteth now onely to intreat your favours; and although I might rest confident by the honourable *Patronage* I have obtained of him, whose high place, and prescience for matters of Justice, and judicious understanding drew me to covet the same, (and not a little besides induced, yea obliged thereto in regard of the neere alliance by Marriage into the Honourable house of the *Spencers*;) Yet withall I could not out of that duty and love which I ow to this Honourable Society, (my first breeder in the Studies of the Law) and hope of your tender respect, to uphold the credit of an affectionate member of your Societie, but be bold also to crave your further countenance in these my labours; and that you would be pleased to accept this loving remembrance as a thankful' gratuity to you, to whom I must ever acknowledge my selfe deeply obliged, and ever to rest at all your commands,

Michael Dalton.

For

the first part of the book is a general introduction to the study of the law, and the second part is a treatise on the law of the land. The third part is a treatise on the law of the sea, and the fourth part is a treatise on the law of the air. The fifth part is a treatise on the law of the sun, and the sixth part is a treatise on the law of the moon. The seventh part is a treatise on the law of the stars, and the eighth part is a treatise on the law of the planets. The ninth part is a treatise on the law of the elements, and the tenth part is a treatise on the law of the universe.

**For the better use of this Book, and finding out of the Authors herein allcaded, you must observe these short directions here**

**under following**  
**First, Fitzherbert. He was sometime of the Judges of the Common Pleas.**

**Br. Brooke, sometimes Lord chiefe Justice of the Common Pleas.**

**Dyer, was also Lord chiefe Justice of the Court of Common Pleas.**

**Godfr. Edw. Coke, Knight, was Lord chiefe Justice of the Kings Bench, for his books of Reports.**

**Godfr. J. Sen. Edw. Cokes first part of Institutes, &c. upon Littleton.**

**Finch, Master Finch, Apprentice del Ley.**

**Blount, Master Plowdens Commentaries.**

**East, Justice, Abridgement of the Statutes, printed Anno Dom. 1583.**

**East, Justice, one of the Judges of the Common Pleas.**

**East, Justice, The booke of entries, Imprinted 1596.**

**Lambert, Master Lamberts Justice of Peace, imprinted 1599.**

**Crompton, Master Cromptons Justice of Peace, imprinted 1606.**

**Poulton, Poultons Abridgement of the Stat. imprinted 1606.**

**Poulton, Poulton de Pace Regis.**

**East, Justice, The Elements of the Common Law.**

**East, Justice, The Elements of the Law.**

**East, Justice, The Elements of the Law.**

**East, Justice, The Elements of the Law.**

**East, Justice, The Elements of the Law.**







that he may himselfe in person sit in judgement, as in ancient times other Kings here have done, and may take knowledge of all cases and causes, unlesse they concern himselfe, for in such cases wherein the King is a party, the King cannot properly sit in judgement, but must performe that by his Justices, Commissioners, or the like. as in cases of treason, felonies, or such others. The King also as he is the principall conservator of the Peace himselfe, so he may command all others to keepe the peace, and may award Proceffe against them to conserve the peace: But he cannot take a recognizance for the peace, because the recognizance is made to himselfe, &c.

*Lamb. 12.*

The Lord Chancellor (or Lord Keeper of the great seale) the Lord high Steward of *England*, the Lord Marshall, and high Constable of *England*, the Lord Treasurer of *England*, and every Justice of the Kings Bench, as also the Master of the Rolls, have inclosed in their said offices the conservation of the peace over all the Realme, and every of these may award Precepts, and take Recognizances for the peace, by vertue of their places, and as incident to their offices: Yea, every one of these upon prayer of surety of the peace made to them, or any of them against another, hath authority to award or grant their precept or warrant to the Sheriffe, Constables, or other the Kings Officers for the arresting of the party, &c. and when he is come before them may take recognizance of him for the peace. And if the party shall refuse to find such surety, they may commit him to prison. And yet for the Master of the Rolls, it is held that he maketh processe and taketh recognizance, not as incident to his Office (as all the other may) but the Master of the Rolls his authority herein is said to be onely by prescription, that he hath used to make such Processe.

But at this day the conservators of the peace are held to be out of use; and that their authority for the keeping of the peace, is now onely by vertue of the Kings Commission of the peace, ordaining them to be Justices of peace. Sir *Fr. Bacon* his use of the Law, pag. 12.

*Lamb. 1.3.*

*2.H.7.1.*

*Dr. Peace 12*

There be others who (by vertue of their offices) have the conservation of the peace, but yet onely within the precinct of their severall Courts, as namely, the Justices of the Court of Common Pleas, the Barons of the Exchequer, and the Justices of Assise. And any person may pray and crave the surety of the peace before any of these in their Courts, and if the party be present, or within the place or precinct of their Court, or within their view, they may send the Warden of the Fleet, or other officers attending their Court, to bring the party before them, and they may take surety of him, and if he shall refuse to find such surety, they may commit him to prison.

Also.

Also the Iustices of Assise, if the peace happen to be broken in their presence, they may command the offender to the Gaole or Prison. And if complaint be made to them that A. is minded to breake the peace, or else if they doe perceive the same in their presence, they may command the parties upon a certaine pain to keepe the peace and that weapons be taken from the Iurors, or witnesses, that appeare before him. But as they be meere Iustices of Assise they may not award any processe or warrant for the peace, neither may they take sureties of the peace, *Lamb. 13.*

Also the Steward of the Sheriffs Turne, the Steward of a Leet, and the Steward of a Court of Pypowders, every of these are conservators of the peace within their severall Courts; For every of them may commit him to ward that shall make an Affray in their presence, whilest they be in execution of their offices; for that these be Courts of Record: and so in all other Courts of Record. But none of these may grant any warrant for the peace. *Lamb. 14. Br. Leet 36.*

And the Steward of the Sheriffes Turne, as also the Steward of a Leet (during their Courts) may by Recognizance, bind him to the peace that shall make an Affray in their presence, sitting the Court: And may commit him to ward untill he hath found surety for the peace: And may also take the Examination of felons, and commit them to the Gaole, and may also take the presentment of any felony at the Common Law, committed within their precinct; Or of any other offence against the peace, except the death of a man. See *Br. Leet 1. 2. 14. 18. 22. 26.* *Crompt. 7. Br. Leet 39. F.N.B. 82. 13. H. 4. 12. 21. Ed. 4. 21.*

And so, if any other contempt or disturbance to the Court shall be committed in any (of the said Courts, or in any other) Court of Record, the Judge (or Steward) there, may impose upon such offenders a reasonable fine. See *Br. Leet 14. 36.* *Co. 8. 38.*

The Sheriffe by the Common Law, is a principall conservator of the peace in every place within his County. And (upon request to him made) he may command another to find surety of the peace, and may take the same surety by Recognizance, and that *ex officio*, and without any writ of *Supplicavit* to him directed: and this seemes to be by vertue of his Commission, which saith, *Commisimus vobis custodiam Communitatis*, &c. vide *Br. Judges 11. & Recogn. 5. 14. 16. & 18.* *F.N.B. 81. d. & 82. Br. Peace 13.*

Coroners also (by the Common Law) are conservators of the peace, within the County where they be Coroners: but they (as also all other the conservators of the peace by the Common Law) have power for the keeping of the peace, onely as the Constables have at this day: vide *hi c infra, & tit. Forcible Entry, & Crompt. 6.* *Stamf. 48.*

The high Constables of hundreds, are conservators of the peace with-

in their severall hundreds, and limits by the Common Law. *Crompt. 6. & 122. H. 7. fol. 18.*

And therefore these high Constables, at their pety Sessions, for any affray made in disturbance of their Court, may imprison the offenders.

*Co. 11. 43. 44.*

*Dr. Peace 13  
F. 127.*

Every pety Constable within the limits of their severall Townes, bee conservators of the peace (at the Common Law) by vertue of their office: *Vide ib. Affray and Forcible Entry.*

And these pety Constables may do what they can to keepe the peace; But they cannot take surety of the peace, at the request of any man. *Vide Crompt. 6. & 122. & 11. H. 7. fol. 18. a. & hic postea.*

*Lat. 51. 32.  
55. 40. & 55*

There be other Officers of much like authority to our Constables: As the Borsholders in Kent, the Thirdborow in Warwickshire, and the Tythingman and Burrowhead or Headborow, or Chiefe Pledge in other places. But yet the office of a Constable is distinct, and (as it seemeth) is of more and greater authority and respect than these other, as you may see by master *Lambert* of the duty of Constables, *pag. 51. & c.* where hee seemeth to hold that these Borsholders, Thirdboroughs, Tythingmen, Headboroughs, and other such, being in any Towne or Parish, whereas a Constable is; those other cannot meddle, because Constables be (in comparison of them) head Officers. And that the Tythingmen, &c. are but as assistants to the Constable in all services of his office when the Constable is present; and in his absence, then these other to attend the service: And that there are many other things which the Constables may doe, and wherewith the Borsholders and the rest cannot meddle at all. And yet in Townes where there be no Constables, and that the Borsholders, Thirdboroughs, Tythingmen, Headboroughs, or such other, be there the onely Officers for the peace; as also in such cases where the power or authority of the Borsholder, &c. is declared to be equall with the power of the Constable: in all such cases and things, their office and authority be in a manner all one. See the Statute 1. *Hen. 7. & Lambert. office d' Const. 4. & 9.*

There be also divers Statutes which do appoint offenders to be punished by the Constable, or other inferiour Officer. See *hic cap. 57.* Now who be these inferiour Officers? not the Tythingmen, &c.

And now for that these pety Constables be much absent from their Houses or homes, partly by reason of their employments in their office, and partly by reason of their owne private occasions, (especially in our, and other like parts of the Land; where these Officers are for the most part husbandmen, and so most part of the day in the fields) it would prove very expedient, if by a Law to be made in Parliament, every Town and Village



Villagers were to haue a Tythingman, or ſuch other Officer, (or the like) to attend this ſervice of the Conſtable in his abſence at the leaſt; for that for want of ſuch aſſiſtance, Rogues, Vagabonds, and the like, knowing their times, now travell up and downe farre more boldly.

And yet Maſter *Crompton fol. 222.* ſaith that a Conſtable may make a Deputy to execute his Office in his abſence, for that he may be ſicke, &c. *quare* in what manner.

If any man ſhall make an affray or affault upon another in the preſence of the Conſtable or Borſholder, or if any man in the preſence of the Conſtable ſhall threaten to kill, beat, or hurt another, or ſhall be in a fury ready to breake the peace, in every of theſe caſes, the Conſtable or Borſholder may commit the offenders (to the Stocks or to ſome other ſafe cuſtody for the preſent, (as his or their quality requireth,) and after may carry them before ſome Juſtice of Peace, or to the Gaole) untill they ſhall finde ſurety for the peace; which ſurety the Conſtable himſelfe may alſo take by obligation, to be ſealed and delivered to the Kings uſe; and if the party will not find ſuch ſurety to the Conſtable, hee may imprifon the party untill he ſhall doe it. *3. H. 4. 9. 10.*

3. H. 4. 9. 10.  
Fi. 127.  
Hic. cap.

I have ſcene the report of *Skarret's caſe, termine Trin. Anno 35. Eliz. Rotul. 1. 438.* where *Skarret* brought his action of falſe imprifonment againſt one *Hanner*, for arreſting the plaintiffe, and imprifoning him, &c. The defendant to the imprifonment pleaded that he was high Conſtable of the hundred of E. in the County of S. and that the plaintiffe made an Affray within the ſaid hundred upon one H. W. who preſently came to him, and told him thereof, and ſwore upon a booke that he was in feare of his life by the other: Whereupon the defendant came to the plaintiffe and arreſted and imprifoned him, untill he had found ſufficient ſureties for the peace: upon which the plaintiffe demurred. And it was adjudged that the plea of the defendant was inſufficient firſt, for that hee was not preſent at the affault and Affray; ſecondly, for that he was the high Conſtable of the hundred, and not Conſtable of the Towne. In the argument of which caſe, *Anderſon* held Conſtables to be conſervators of the peace at the Common Law, and ſtill ſo to be, and that they ought to preſerve the peace as much as in them lyeth, but that (ſaid he) was by parting of men which he ſhould ſee breaking of the peace, and to carry them before a Juſtice of peace, to find ſureties for the keeping thereof: but to take ſureties himſelfe, the Conſtable cannot. And thoſe which hold that he may take ſurety cannot ſell what ſurety that ſhould be, for he cannot take a recognizance, nor baile, for he is no Officer of Record; and if he ſhall take an obligation, how the ſame ſhall be certified and in-



to what Court, he said he knew not, and that it should be very inconvenient to give such authority to every Constable. But by *Walmeslye, Owen,* and *Beaumont*, although a Constable cannot take surety for the peace by recognizance nor bayle, yet he may take an obligation according to the booke 10.E.4. And if the Affray be in their presence, they are conservators of the peace, and therefore may use such meanes for the keeping of the peace by taking surety by obligation. And that before Justices of Peace were, the peace was preserved, and that by the Constables. And that the Statute which ordained Justices of Peace, did not take away the authority of the Constable; But the Constable hath no authority to take an oath of the party that he is in feare, &c. Whereunto *Anderson* chiefe Justice replied, saying, I doubt not but that at the Common Law the peace was kept, but that was to be done in such manner as the Law appointed, and that is by writ out of the Chancery or Kings Bench.

BACON.V.5.

Sir *Fr. Bacon* Lord *Verulam* in his booke intituled the Use of the Law, writeth to this effect, By the Common Law, the Constables office was to arrest the parties that had broken the peace; or were (in a fury) ready to breake the peace: *sc.* if either hee had seene it himselve; or were truly informed thereof by others; or upon the confession of the party, who had freshly broken the peace; And that all such offenders the Constable might imprison in the Stocks, or in his owne house, as the quality required, untill they had beene bound by obligation, with sureties to the King to keepe the peace from henceforth: which obligation was to bee sealed and delivered to the Constable to the use of the King; And the Constable was to send it into the Exchequer, or Chancerie, from whence Proccesse should be awarded to levie the debt, if the peace be broken; *quod Nota. Vide etiam Finch, fol. 127.* agreeing herewith, for such as the Constable findeth breaking the peace.

Every of these Conservators of the Peace are (by the ancient Common Law) to employ their own valour, and may also command the meet help, ayd, and force of others, to arrest and pacifie all such who in their presence, and within their jurisdiction and limits, by word or deed, shall goe about to breake the Peace.

Also every of these Conservators of the Peace, if they have committed, or bound over any such offenders, it seemeth they are then to send to, or to be present at, and attend the next Sessions of the Peace, or Gaole delivery, there to object against such offenders.

But for the high Constables, and pety Constables, although they have (by the Common Law) the charge of the Peace as incident to their office, yet it seemeth to some, that their offices and authority began not long

long before the time that Iustices of Peace were ordained, (see here *the Constable*.) Whereas the Sheriffs, Coroners, Stewards of the Sheriffs Turne, of the Leet, and of the Court of Pypowders, and the Iustices of all higher Courts, were long time before the conquest. See *Co. 9. Part.* the Preface.

There were sundry other persons, who (by the ancient Common Law) had the ordinary keeping of the peace, and were named *Custodes pacis*, whereof some were by election (in full county,) and some by Tenure, as you may see in *M. Lambert 16, 17*. There were others which were called to this office by the Kings Writ, to continue for the terme of their lives, or at the Kings pleasure, but these are now all ceased.

*The first ordaining of Iustices of the Peace. Cap. 2.*

**K**ing Edward the first (according to the first Article of the sacred Oath received by him, and since by other Kings & Queens of this Realm at their severall Coronations, the which is in these words, *Servabis Ecclesia Dei, Clero, & Populo, pacem ex integro, & concordiam in Deo secundum vires tuas; Quibus Rex respondit, Servabo*) in his first Parliament holden *An. 3.* of his reigne, *cap. 1.* hath established and cominanded, that the peace of holy Church, and of the Land, shall be well kept and maintained in all points: The which peace of the Church is (and alwayes hath been by the antient Lawes of the Land) protected and conserved by the King, the Archbishops, and Bishops of this Realme: And the Peace of the Land is and alwayes hath been defended and maintained by the same King, and their temporall Iustices or Officers lawfully appointed for the same, &c. Which temporall Iustices, at the first were the conservators of the Peace, as aforesaid. But more especially in those times there also were in every County continually Iustices of Oyer and Determiner, and also there were Iustices Itinerants, the which had power not onely to determine all manner of quarrels (as well reall, as personall) but also all offences against the Peace, &c. as may appeare in our Law-bookes, and especially in *M. Fitzh. tit. Corone* amongst the *Term North & Cant.*

For although by Chronicle Law in our Annals, it is reported, that *William the Conqueror* ordained Iustices of the Peace, but *An. Do. 1076* *An. quarto* of his reigne; yet Iustices of Peace had not their being almost three hundred yeares after, *viz.* untill *Anno Do. 1337* At which time Iustices or Commissioners of the Peace were first created and ordained by the Stat. 1. Ed. 3. *cap. 16.* By which Statute it was ordained, that in every Shire

Their beginning.  
*Hollingsb. 8.*

Shire of the Realme certaine persons should be assigned (*sc.* by the Kings Commission) to keepe the Peace: And their authority was after enlarged by the statutes 4.E.3.ca.2.18.Ed.3.cap.2.34.Ed.3.ca.1. And by the said statute of 34.Ed.3.1. were they first (generally) enabled to heare and determine (at the Kings suit) all manner of felonies and trespasses; And each County had now its proper Commissioners for the Peace, whereas before (it seemeth) the Commissions to the Iustices of Peace were not alwayes made severally into each Shire: but sometime joyntly to sundry persons over sundry Shires.

Their  
name.

But the statute of 36.Ed.3.cap.12. is the first statute that nameth them Iustices of the Peace: For the statutes of 2.Ed.3.cap.6. and 25.Ed.3.cap.6.7.8. speaking of Iustices, seeme not to be of our Iustices of Peace; but that of 2.Ed.3. as also the statute of Winchester cap.6. therein mentioned, to be meant of Iustices Itinerants, or Iustices in Eyre: and the other of 25.E.3. to be meant of Iustices or Commissioners specially assigned for Servants and Laborers. See for this last *Lamb. 24. 577. 578.* and the statutes of Laborers made 25.E.3.cap.6.7.8. and of 42.Ed.3.cap.6 *Regal. fol. 233. a. b. d.*

They be called Iustices (of the peace) because they be Iudges of Record; and withall to put them in mind (by their name) that they are to doe justice (which is, to yeeld to every man his owne by even portions, and according to the Lawes, Customes, and Statutes of this Realme,) without respect of person.

They are named also Commissioners (of the peace) because they have their authority by the Kings Commission.

And here it shall not be amisse, shortly to put our Iustices of peace in mind, how that Iustice may be perverted many wayes, (if they shall not arme themselves with the feare of God, the love of Truth and Justice, and with the authority and knowledge of the Lawes and Statutes of this Realme:.) As namely;

1. First by Feare; when fearing the power or countenance of another, they doe not iustice. *Deut. 1. 17. Ye shall not feare the face of man, for the iudgement is Gods. Who is Capitalis Iusticiarius totius Mundi; Chief Iustice of Heaven and Earth.*

2. Favour; when they seek to please their friend, neighbour, or others. *Deut. 1. 17. Ye shall have no respect of person in judgement.*

3. Ignorance or malice against the party or some of his. See *Levit. 19. 18.*

4. Conscienceless; when they receive or expect fee, gift, or reward:

*Eccl. 10. 18. for as the miller is faithfull, Friends and gifts doe blind the eyes of the wise, whereby they shall deliver themselves from all manner of sinne.*



5 Perturbation of minde; as anger, or such like passion: James 1. 20. The wrath of man doth not accomplish the Righteousnesse of God.

6 Ignorance, or want of true understanding; what is to be done: *Ignorantia mater Erroris.*

7 Presumption; when without Law (or other sufficient rule or warrant) they (presuming of their own wits) proceed according to their own wils and affections: There is more hope of a foole, than of him that is wise in his own conceit, *Pro. 26. 12.*

8 Delay; which in effect is a denying of justice, *Negligentia semper habet comitem infortunium, & mora trahit periculum.*

9 Precipitation; or too much rashnesse; when they proceed hastily without due examination and consideration of the fact, and of all materiall circumstances, or without hearing both parties; for as another saith (*Qui aliquid statuerit parte inaudita altera, equum licet statuerit, hand equus est;*) He that shall judge or determine of a matter, the one party being unheard, although hee shall give just judgement, yet hee is not a just Judge. And again, *Omnia non properant clari certaque sunt, festinatio autem semper improvida ac caca est;* All things are plaine and certain to him that is not rash nor heady; but haste is always improvident and blinde. See *Deut. 17. 4. & Ecclesiasticus 11. 7, 8.*

113 113

All these King James his Majesty, of happy memory, hath shortly, His Majesty fully observed in his charge lately given to the Judges, *sc.* charging them, *That they do justice uprightly and indifferently, without delay, partiality, feare, or bribery, with stout and upright hearts, with clean and uncorrupt hands, and yet not to utter their own conceits, but the true meaning of the Law, not making Laws, but interpreting the Law, (and that according to the true sense thereof, and after deliberate consultation,) remembering that their office is, Jus dicere, and not Jus dare.*

His Majesty  
Speech in  
Star-chamber,  
1616.

According to this last also is the rule given in the book of Judges, *sc.* *Judg. 19. 32.* *In all causes doubtfull first to consider of the matter, to consult, and then to give sentence.*

Yea, God himselfe hath given us precedents of such deliberate proceedings, as you may see in *Genesis cap. 3. vers. 8. & c. & cap. 18. vers. 21. 11.*

These are worthy directions for all Justices of Peace, that they carry themselves in their places uprightly and indifferently, not uttering their own conceits, nor upon the sudden to over-rule things, but after deliberate consideration and consultation, then to proceed to execute the authority committed to them.

Justices of Peace are Judges of Record, appointed by the King to be Justices within certain limits, for the conservation of the peace, and for

Their description  
or definition  
thereon.



the execution of divers things comprehended within their Commission, and within divers Statutes committed to their charge.

9 F. 4. 3. Now first that the Iustices of Peace are Judges of Record (yea, that  
14 H 8 16. every Iustice of Peace by himselfe is a Iudge of Record, and one upon whose sole report and testimony the Law reposeth it self very much) appeareth more plainly, if you observe these things following :

1 He is made under the great Seal of England, which is a matter of Record.

2 Every Iustice of Peace hath judiciall power given unto him by the Commission, *sc.* in the first *Assignarius*.

3 Also by some Statutes they have judiciall power given them ; for they may make a Record of a force by them viewed, and may thereupon fine and imprison the offenders : yea, one Iustice of Peace in some cases, may also heare and determine offences, and punish an offender as convict upon his own view, or upon the confession of the offender, or upon examination and proof of witnesses. *Vide tit. Forcible Entry, and Heare and Determine. Vide hio cap. 22. & 66.*

12 b 67 94. 4 His Warrant (though it be beyond his authority) is not disputa-  
14 H 8 18. ble by the Constable, or other inferiour Minister, but must be obeyed and executed by them : But this must be understood, when the Iustice of Peace hath jurisdiction of the cause, for, or concerning which he hath granted his Warrant ; for otherwise the Constable or other Officer executing their Warrant, seemeth to be punishable, notwithstanding the Iustices Warrant. *Vide tit. Warrants, cap. 117.*

1 Lamb. 69. 5 He may take a Recognizance (for the peace, &c.) which is a matter of Record, and which none can do but a Iudge of Record. See *Br. Recog. 8. & 14.*

6 His Record (or testimony) in some cases, is of as great force as an indictment upon the oath of twelve men, and in some other cases of greater force than an indictment. See hereof, *tit. Force, Highways, Peace, and Riot.*

7 He also may make out processe upon Indictments, or Information against offenders, &c. yea, and that out of their Sessions, ( in some cases ) as they may see hereafter, *tit. Process, cap. 132.*

Great cause therefore have the Iustices of Peace to take heed that they abuse not this their credit and authority, either to the oppressing of the subject by making untrue Records, or defrauding of the King by suppressing the true Record.

The num- By the Statute of 12 R. 2. cap. 10. there should be but fix Iustices of  
ber. Peace (in every Commission of the Peace) with the Iustices of Assise.

After

After, by the Statute 14 R.2.cap.11. it was ordained that there should be eight Iustices of Peace assigned, besides the Lords.

And two Lawyers (at least) shall be assigned in every County, to heare and determine felonies and trespasses done against the peace: 18 E.3.cap.2. 34 E.3.cap.1. & 17 R.2.cap.10.

Also Iustices of Peace ought to be Resident and dwelling within the same County, (except Lords, and Iudges, &c.) 2 H.5.cap.4. & 2 H.5. Stat.3.cap.1.

Peace. CAP. 3.

**P**Peace in effect (saith M. Fitzh.) is the amity, confidence, and quiet *Fitz. Iust. of* that is between men; And hee that breaketh this amity or quiet, *P. 12.* breaketh the Peace.

Yet Peace (in our Law) most commonly is taken for an abstinence from actuall and injurious force, and offer of violence; and so is rather a restraining of hands, then an uniting of minds. And for the mayntenance of this Peace chiefly, were the Iustices of Peace first made.

The breach of this Peace seemeth to be any injurious force or violence moved against the person of another, his goods, lands, or other possessions, whether it be by threatening words, or by furious gesture, or force of the body, or any other force used *in terrorem*.

The office of the Iustice of Peace is principally to be exercised to the suppressing of such injurious and unlawfull force or violence; and yet (the Commission of the Peace being *pro bono pacis, ac pro conservatione ejusdem, & pro quieto regimine & gubernatione populi*) I see not why the Iustices of Peace should be restrained from preventing and repressing such other offences, misbehaviours, and deceits, as may break the amitie, quiet, and good government of the people, and whereof discords, and so breaches of the peace do often arise (though there appeare neither force nor violence in the offence it self:) as libellings, coozenages, and such other offences, *Vide ut. Good Behaviour.*

But it is no part of the office of the Iustice of Peace, to forbid lawfull suits; albeit they shall doe well to be mediators of Peace in such suits and controversies as shall arise amongst their Neighbours. Neither shall any man be punished for suing any VVrit in the Kings Courts, *soit ceo de Droit, ou de tort. Co. L. 1. 61.*

The conservation of this peace (and therein the care of the Iustice of Peace) consisteth in three things, *viz.*

1 In preventing the breach of the Peace, (wisely foreseeing and repressing the beginnings thereof) by taking surety for the keeping of it, or for the good behaviour of the offenders, as the case shall require.

2 In pacifying such as are in breaking of the peace. See *postea tit. Affray.*

3 In punishing (according to Law) such as have broken the peace. But of the three, the first, the preventing Justice, is most worthy to be commended to the care of the Justices of Peace.

Three  
sorts.

Justices of Peace (at this day) are of three sorts, and are appointed or created by three means :

27 H. 8. 24.  
P. Just. 2

1 First, by Act of Parliament ; as the Bishop of Ely and his successors, and their temporall Stewards of the Isle of Ely ( for the time being ) shall be Justices of Peace within the said Isle , and shall use and have within the said Isle, all such power as doth belong to any Justice of Peace within any Countie.

And so of the Archbishop of York, and the Bishop of Durham, and their successors, and their temporall Chancellors, &c. *ibidem.*

By grant  
Lamb 26.

2 Secondly, by Grant made by the King by his Letters Patents, under the great Seale, (and by his Bill assigned) as Majors, and chief Officers in divers corporate Townes : And such the King cannot discharge againe at his pleasure, but they shall continue and enjoy their jurisdiction, according as their Letters Patents doth enable them; and therefore if the King granteth to a Major, or other head Officer of a City, or Corporate Towne ; and to their successors, to be Justices of Peace in their Citie or Towne, and after maketh out a Commission of the Peace to others there, yet the authoritie and jurisdiction of the Major, &c. remaineth good, for that it was granted to them and their successors, and is not revocable at the Kings pleasure, as a Commission of the Peace is.

Br. Com-  
miss. 5.

And such Justices of Peace, by Grant or Patent, have thereby the same power that the conservators of the Peace had by the common Law; and it seemeth, such power also as is given to the Justices of Peace (or to any one Justice of Peace) by expresse words in any Statute : But none of them have thereby the whole power which is ordinarily given to the Commissioners of the Peace by their Commission : And so it seemeth of the first sort of Justices of Peace by Act of Parliament, *sc.* of the Archbishop of York, and the Bishops of Durham, and Ely, and their temporall Chancellors, and Stewards.

Also concerning such Justices of Peace by Grant or Patent, if the Grant be made to such as be not learned in the Law, yet if the Grant be *ad pacem conservandum, &c.* or *ad inquirendum tantum*, that is a good Grant;



Grant; But if their Grant be made *ad audiendum & terminandum*, this is a void Grant (*ne diutius*) unless some one man learned in the Laws of this Realme be also joyned with the other in the Commission, and then such a Commission made *ad audiendum & terminandum* is good in Law. For in all cases where the Commission or Grant is *ad audiendum & terminandum*, it is meet that some, or one at the least, should be learned in the Laws of this Realm. See the Statutes 18 E. 3. cap. 2. & 13 R. 2. cap. 7. & 17 R. 2. cap. 10.

3 The third sort of Justices of Peace are by Commission. (made of By Commission. 18 H. 6. c. 11. Rastal. 184. d.) common course,) under the great Seale of England: and these are appointed by the discretion of the Lord Chancellor. And yet the Justices of Peace within the County Palatine of Lancaster, are to be made by Commission under the Seale of the same Duchie by the Statute 27 H. 8. cap. 24.

But these Commissioners of the Peace, their authority doth determine by divers means; yet more usually by three means:

First, by the death of the King, or by his Resignation of his Crowne: For by the Commission he maketh them *Iusticiarios nostros*, so that hee being once dead, or having given over his Crown, they are no more his Justices; And the Justices of the next Princee they cannot be, unless it shall please him afterwards so to make them; Lamb. 71. Dyer, 165.

Secondly, at the Kings pleasure; and that in two sorts.

1 Either by the Kings pleasure expressed, (as the King in expresse words may discharge them by his Writ under the great Seal) or by *Superfedeas*: but the *Superfedeas* doth but suspend their authority, which may be revived by a *Procedendo*. § E. 4. 32. Br. Com. miss. 18. 12 Aff. 11. Br. Com. miss. 13. Br. Com. miss. 20, 24.

2 Or by implication; (as by making other Commissioners of the same kind, and within the same limits, leaving out the ancient Commissioners names) 10 E. 4. 7. & 3 Mar. 1.

But here the ancient Commissioners must have knowledge of such new Commission; for this determination of the old Commission groweth not immediatly by the making of the new Commission; but either by giving speciall notice of the new Commission unto the old Commissioners; Or else by and after the reading (or proclaiming) of the new Commission, at the Assises, Sessions of Peace, or at the full County; Or else by holding of some open Sessions, by vertue of the new Commission; (in which two last cases, the old Commissioners must take notice of the new Commission.) And in all these cases, if the ancient Commissioners do sit by vertue of their ancient Commission, and after such notice or publishing of the new Commission, all whatsoever



such ancient Commissioners shall so do, is void: And contrariwise, untill such notice or publishing of the new Commission, whatsoever mean Acts such ancient Commissioners shall doe, by vertue of their ancient Commission, is good in Law. See 34 Aff. 8. Br. Commiss. 14.

II H. 6. c. 6. Also in all cases where an ancient Commission of the Peace is determined by a new, yet no processe or suit depending before the old Commissioners shall be discontinued thereby, neither shall any other thing done by the Iustices of the Peace by force of their ancient Commission, be made or become void thereby.

3 Thirdly, by the Accelision of another office, as when a Iustice of Peace is chosen to be Sheriff of the same County, his authority of a Iustice of Peace there is suspended during his Sheriffwick; But after that another is chosen, and sworn Sheriff of the same County, then his authoritie as a Justice of Peace remaineth as it was before, without any renewing of the Commission, and without any of the oathes newly to be taken by him; except his name be then put out, or left out of the Commission, as sometimes hath been used to be done, and perhaps onely to get new fees.

The reason why his authority of a Justice of Peace is suspended during his Sheriffwick, seemeth to be, for that the Sheriff is a Minister, and a Justice of Peace is a Judge, and the one is as necessary as the other. And besides, the Office of a Judge being to command, and of a Minister to execute the Commandement; if one man shall be both Judge and Minister thereof, it would follow that the Sheriffe ought to command himselfe, or that hee should as an Officer serve his owne precept, made as a Justice or Judge, the which cannot be.

Also if a Justice of Peace be made a Coroner of the County, this by some opinions is a discharge of his authority of Justiceship of Peace: otherwise, say they, where he shall be made an Escheator, Undersheriff, Bailiff or the like. Lamb. 72. quare.

IE 6 ca. 7. But if a Justice of Peace be made a Knight, or Serjeant at Law, or P. Discont. 4 hath any greater name or Office of honour or dignity given him, this taketh not away his authority of a Justice of Peace. Br. Commiss. 4. & 22. See also the Statute of 1 E. 6. c. 7.

Com. Note also, that although by the death of the King, or by his resignation, the authority of all Justices of Peace (yea and of all Judges, Commissioners of Oyer and Terminer, Commissioners of Gaole delivery, Sheriffs, Escheators, and other Officers that are by Commission) doth cease; yet Majors, and chiefe Officers in Cities and Corporate Townes, (which have the authoritie of Justices of Peace, or of the conservation of

Ex. { Com.  
19, 11  
Coffi 15  
Dyer 165.  
Co 7. 30.  
Br. Com 3.

of the Peace by Grant under the Kings Letters Patents to them and their Successors) their authoritie still remaineth, notwithstanding the Kings death or resignation.

So also the Office and authority of the high Constables and petty Constables, seemeth to remain, notwithstanding the death of the King, &c. for that their authoritie is by the Common Law, and to their said Office the conservation of the Peace remaineth as a thing incident, and unseparable from the same.

Coroners also doe remaine Conservators of the Peace (within the County where they are Coroners) notwithstanding the Kings death, &c. for they are made by the Kings Writ, and not by Commission; and their Office and authoritie doth remaine untill they be removed by the Kings Writ; and their Office remaining, the conservation of the Peace remaineth as incident thereto.

4 E. 4. 44.  
Pr. Offic 25.  
Dyer 163.

## CAP. 4.

**E**Very Justice of Peace (before hee shall take upon him to exercise Their the Office of a Justice of Peace) shall take two Corporall oaths; the one concerning the Office of a Justice of Peace; the other concerning the Kings Supremacie.

oaths.  
P. Inst 4.  
1 Eliz. 1.

The Oath concerning this Office, seemeth to be by force of the Statute made 13 R. 2. cap. 7. And yet see the Oath of the Justices, made Anno 18 E. 3. much to the like effect that now it is: in which yeare also M. Marrow taketh it, that Justices of Peace were first made; they having then first power given them to heare and determine felonies and trespasses against the Peace, as appeareth by the Statute of 18 E. 3. c. 2.

The form of the Oath is, at this day, as followeth:

**Y**E shall swear, that as Justice of the Peace in the Countie of Cambridge, in all Articles in the Kings Commission to you directed, you shall do equall right to the poore, and to the rich, after your cunning, wit, and power, and after the Lawes and Customes of the Realm, and Statutes thereof made: And ye shall not be of counsell of any quarrell hanging before you: And that yee hold your Sessions after the form of Statutes thereof made: And the issues, fines, and amerciaments that shall happen to be made, and all forfeitures which shall fall before you, ye shall cause to be entred without any concealment, (or

imbezelling) and truly send them to the Kings Exchequer; yee shall not let for gift, or other cause, but well and truly you shall do your Office of Justice of the Peace in that behalf: And that you take nothing for your Office of Justice of the Peace to be done, but of the King, and fees accustomed, and costs limited by the Statute: And ye shall not direct, nor cause to be directed, any Warrant (by you to be made) to the parties, but ye shall direct them to the Bailiffs of the said Countie, or other the Kings Officers (or Ministers) or other indifferent persons, to doe execution thereof. So help you God, &c.

The parts of this Oath are shortly six:

1 That they shall do equall right to rich and poor, and according to the Laws and Statutes of the Realme.

2 That they shall not be of counsell with any person, in any matter depending before them.

2 Hen. 5. 4.  
P. 1. 1. 5.

3 That they shall keep their Sessions according to the Statutes, which (as it seemeth by the prescript of the Statute 2 H. 5. cap. 4.) ought be in the first week, after the Feast of Saint *Michael*, after the *Epiphany*, after the clause of Easter, and after the translation of Saint *Thomas*, (being the third day of Iuly.) And accordingly the quarter Sessions of the Peace ought so still to be holden throughout the Realm. See *Lambt.* 579, 580. And yet by the Statute of 14 H. 6. cap. 4. The Iustices of Peace of Middlesex are to keep their Sessions but twice in the year.

4 That all issues, fines, amerciements, and forfeitures which happen before them, be by them truly entred, and sent into the Exchequer.

5 That they take nothing for doing their Office but of the King, and the accustomed fees appointed by the Statutes.

6 That they shall not direct any their Warrants to the parties, but to the Bailiffs of the County, or to other the Kings Officers, or other indifferent persons.

Now further concerning the times of the quarter Sessions, it seemeth to be the intent or meaning of the afore-recited Stat. 2. H. 5. c. 4. that the weeks wherein the aforesaid Feasts of Saint *Michael*, the *Epiphany*, and Saint *Thomas* falleth, must be first ended before the Sessions can begin. So that if any of these three Feast days shall fall upon the Sunday, Monday, Tuesday, or Wednesday, then shall the Sessions (in our County of Cambridge) be upon Thursday seven night after; but if any of those Feasts shall fall upon Thursday, Friday, or Saturday; then shall our Sessions be upon the next Thursday after; and for our Easter Sessions upon the Thursday seven night after Easter day.

2. 1. 1. 4.

The other Oath concerning the Kings Supremacy, is by force of the Statute



statute made *primo Eliz. cap. 1.* The forme of which Oath also followeth.

**I** Michael Dalton, doe utterly testifie and declare in my conscience, that the Kings Highnesse is the onely Supreme Governour of this Realme, and of all other his Highnesse Dominions and Countries, as well in all Spirituall & Ecclesiasticall things (or causes) as Temporall: And that no forreign Prince, Person, Prelate, State, or Potentate, hath, or ought to have any jurisdiction, power, superlority, preheminence, or authority, Ecclesiasticall or Spirituall, within this Realme: and therefore I doe utterly renounce and forsake all forreign jurisdiction, powers, superiorities, and authorities. and doe promise, that from henceforth I shall beare faith and true allegiaunce to the Kings Highnesse, his heires, and lawfull successors, and (to my power) shall assist and defend all jurisdiction, privilege, preheminence and authority granted or belonging to the Kings Highnesse, his heires and successors, and united and annexed to the Imperiall Crowne of the Realme. So helpe me God &c.

The Iustices of Peace ought to take this Oath for the Supremacie, in the open Court of Sessions where they shall serve, by the statute of 5. *E. 1. (as M. Crompton holdeth;)* and it were very fitting so to be; or else to be taken at the Assises by the Iudges, lest (by indirect practice) it be neglected. *Crompt. 11. P. Crowne 5. vide.*

Yet it is most usuall that both these Oaths are taken by a special commission, (*viz.* by Writ of *Dedimus potestatem*, directed out of the Chancery to some ancient Iustice of Peace, to take the same Oaths) which by them is to be certified into the same Court, at such day as the Writ commandeth. The forme of which certificate, see *hic postea cap. 130.* *See 1 El. c. 1*

The Iustice of peace (or other person) to whom a *Dedimus potestatem* shall be directed, to take the Oaths of a new Iustice of peace, if he shall returne the Commission, and the oaths to be taken, when they were not taken, this is fineable in the Star-chamber.

So if the new Iustice of Peace shall exercise this Office before he hath taken both these oaths, he is likewise finable in the Star-chamber.

Also if a Iustice of Peace shall not performe his Oath (concerning his Office) it seemeth he is fineable in the Starre-chamber, &c. Yet see *Co. 11. 98. 1.* That a man shall not be charged in any Court judiciall for the breach of a generall Oath, which he taketh when he is made an Officer, or Minister, &c. *Crompt. 11. Co. 11. 98.*

There is a third Oath, tending to the declaration of such duty as every well affected subject by bond of Allegiance, and by the Law of God Allegiance, ought to beare to his Sovereaign; which Oath is by force of the statute

3. *Iac. cap. 4.* And is to be taken also by all Iustices of Peace (among others) by the statute 7. *Iac. cap. 6.* which Oath is usually taken before the Iudges of the Assise of the same County, where the parties (to be sworn) reside.

The forme of this Oath is thus.

**I** *Michael Dalton*, doe truly and sincerely acknowledge, professe, testifie and declare in my conscience before God, and the world, That our Sovereign Lord King CHARLES, is lawfull and rightfull King of this Realme, and of all other his Majesties Dominions and Countreys: And that the Pope, neither of himselfe, nor by any authoritie of the Church, or Sea of Rome, or by any other meanes with any other hath any power or authority to dispose the King, or to dispose any of his Majesties Kingdomes or Dominions, or to authorize any forreign Prince to invade or annoy him, or his Countries, or to discharge any of his subjects of their Allegiance and Obedience to his Majestie, or to give licence or leave to any of them to beare armes, raise tumult, or to offer any violence or hurt to his Majesties royall Person, State, Government, or to any of his Majesties subjects, within his Majesties Dominions. Also I doe sweare from my heart, that notwithstanding any declaration or sentence of excommunication or deprivation made or granted, or to be made or granted by the Pope or his successors, or by any authority derived, or pretended to be derived from him, or his See, against the said King, his heires or successors, or any absolution of the said subjects from their obedience, I will beare faith and true Allegiance to his Majestie, his heires and successors, and him and them will defend to the uttermost of my power, against all conspiracies and attempts whatsoever, which shall bee made against his or their Persons, their Crowne and Dignity, by reason or colour of any such sentence or declaration, or otherwise; and will doe my best indeavour to disclose and make knowne unto his Majestie, his heires and successors, all treasons and trayterous conspiracies, which I shall know or heare of to bee made against him or any of them. And I doe further sweare, That I doe from my heart abhorre, detest, and abjure, as impious and hereticall, this damnable doctrine and position, That Princes which be excommunicated or deprived by the Pope, may bee deposed or murdered of their subjects, or any other whatsoever. And I doe beleieve, and in conscience am resolved; That neither the Pope, nor any other person whatsoever, hath power to absolve me of this Oath, or any part thereof, which I acknowledge by good and full authority to be lawfully administred unto me, and doe renounce all Pardons

dons and Dispensations to the contrary. And these things I doe plainly and sincerely acknowledge and sweare, according to these expresse words by me spoken, And according to the plain and common sense and understanding of the same words, without any equivocation, or mentall evasion, or secret reservation whatsoever. And I doe make this recognition and acknowledgement, heartily, willingly, and truly, upon the true faith of a Christian. So helpe me God.

*Nota quod Iuramentum debet habere Comites, Veritatem, Iudicium, & Iusticiam. Jer. 4. 2. Et si ista defuerint, non Iuramentum, sed Perjurium erit: Nemo se seducat, qui enim per lapidem falsè jurat, perjurus est; Quacunque arte verborum, vel mentis reservatione juret aliquis, Deus ita accipit sicut ille cui juratur, intelligit; Et minus malum est per deum falsum jurare veraciter, quam per Deum verum jurare fallaciter.*

Now for that all the authority and power of the Commissioners or Justices of the Peace, ariseth partly out of their Commission, and partly out of the Statutes, I will first set downe the forme of the Commission it selfe, shortly considering the parts thereof.

*The forme of the Commission of the Peace. CAP. 5.*

**C**AROLUS &c. Prædilecto & fideli Thomæ Domino Coventry de Allesburrrough Domino Custod. mag. sigilli Angliæ, Richard. Weston Comiti Portland Thesaurario Angliæ, &c. Salutem.

Sciatis, quod Assignavimus vos conjunctim & divisim & quemlibet vestrum, Iusticiarios nostros, ad pacem nostram in Comitatu nostro Cantabrigiæ conservandam, Ac ad omnia Ordinationes & Statuta pro bono pacis nostræ ac pro conservatione ejusdem, & pro quieto regimine & gubernatione populi nostri edita in omnibus & singulis suis Articulis in dicto Comitatu nostro (tam infra libertates, quam extra) juxta vim, formam, & effectum eorundem custodiendum, & custodiri faciendum. Et ad omnes, contra formam Ordinationum vel Statutorum illorum aut eorum alicujus, in Comitatu prædicto delinquentes, castigandum & puniendum, prout secundum formam ordinationum & statutorum illorum fuerit faciendum, Et ad omnes illos, qui alicui, vel aliquibus de populo nostro de corporibus suis, vel de incendio domorum suarum, minas fecerint, ad sufficientem securitatem de pace vel bono gestu suo, erga nos & populum nostrum inveniendam coram vobis, seu aliquo vestrum venire faciendum. Et si hujusmodi securitatem invenire recusaverint, tunc eos in prisonis nostris (quosque hujusmodi securitatem invenerint) salvo custodiri faciendum.

I  
Ad pacem  
conservandam.



2

Ad Inqui-  
rendum.Indictamen-  
ta capere.Processus  
facere.Ad audiend.  
& termi-  
nand.

*Affignationibus iuribus vestris, & quoscunque duo, vel plures vestrum (quorum aliquem vestrum, A.B.C.D.E.F. &c. nunc esse volumus) Iusticiarios nostras, ad inquirendum per Sacramentum proberum & legalium hominum de Comitatu predicto (per quas rei veritas malis sciri poterit) de omnibus & quovis odii felonis, beneficiis, incantationibus, sortilegiis, arte magica, transgressionibus, forstallariis, regratariis, ingrossariis, & extorcionibus quibuscunque: Ac de omnibus & singulis aliis malefactis & offensis (de quibus Iusticiarii pacis nostre legitime inquirere possunt, aut debent) per quoscunque & qualitercunque in Comitatu predicto factis siue perpetratis, vel impofterum ibidem fieri, vel attemptari contigerit: Ac etiam de omnibus illis qui in Comitatu predicto inconvenculis contra pacem nostram, in perturbationem populi nostri, seu vi armata ierunt, vel equitaverunt, seu impofterum ire vel equitare presumpserint: Ac etiam de omnibus iis qui ibidem ad gentem nostram mactandum, vel interficiendum in insidiis jacuerunt vel impofterum jacere presumpserint: Ac etiam de hostclariis, & aliis omnibus & singulis personis, qui in abusu ponderum vel mensurarum, siue in venditione victualium, contra formam Ordinationum & Statutorum vel eorum alicuius inde pro communi utilitate regni nostri Anglia & populi nostri ejusdem, editorum deliquerunt, vel attemptaverunt, seu impofterum delinquere, vel attemptare presumpserint in Comitatu predicto: Ac etiam de quibuscunque Vicecomitibus, Ballivis, Seneschallis, Constabulariis, Custodibus Gaolarum, & aliis officiariis, qui in executione officiorum suorum (circa premissa seu eorum aliqua) indebitè se habuerint, aut impofterum indebitè se habere presumpserint, tepidi, remissi vel negligentes fuerint, aut impofterum fore contigerit in Comitatu predicto: Et de omnibus & singulis articulis & circumstantiis, & aliis rebus quibuscunque per quoscunque & qualitercunque in Comitatu predicto factis, siue perpetratis, vel quæ impofterum ibidem fieri, vel attemptari contigerit, qualitercunque premissorum, vel eorum alicuius, concernentibus plenius veritatem. Et ad indictmenta quæcunque sic coram vobis seu aliquibus vestrum capta, siue capienda, aut coram aliis nuper Iusticiariis pacis in Comitatu predicto facta, siue capta (& nondum terminata) inspicienda: Ac ad processus inde versus omnes & singulos, sic indictatos, vel quos coram vobis impofterum indictari contigerit (quoscunque capiantur, reddant se, vel utlagentur) faciendum & continuandum. Et ad omnia & singula felonias, beneficia, incantationes, sortilegia, artes magicas, transgressiones, forstallarias, regratarias, ingrossarias, extorciones, convencicula, indictmenta predicta, ceteraque omnia & singula premissa, secundum leges, & statuta regni nostri Anglia (prout in huiusmodi casu fieri consuevit aut debuit) Audiendum & Terminandum, & ad eosdem delinquentes, & quemlibet eorum, pro delictis suis, per fines, redemptiones, amercia-*

amerciamen<sup>ta</sup>, satisfactura, ac alio modo ( prout secundum legem & consuetudinem Regni nostri Anglie, aut formam Ordinationum vel Statutorum predictorum, fieri consuevit aut debuit ) castigandum & puniendum.

Proviso semper, quod si Casus difficultatis super determinatione aliquorum premissorum coram vobis vel aliquibus duobus vel pluribus vestrum evenire contigerit : tunc ad iudicium inde reddendum, nisi presentia unius Iusticiariorum nostrorum, de uno vel de altero Banco, aut Iusticiariorum nostrorum ad assisas in Comitatu predicto capiendas assignatorum coram vobis vel aliquibus duobus vel pluribus vestrum minime procedatur.

Et ideo vobis, & cuilibet vestrum mandamus quod circa custodiam pacis, Ordinationum, Statutorum & omnium & singulorum ceterorum premissorum, diligenter intendatis. Et ad certos dies, & loca, qua vos vel aliqui huiusmodi, duo vel plures vestrum ( ut predictum est ) ad hoc provideritis, super premissis faciatis Inquisitiones, & premissa omnia & singula audiat & terminetis, ac ea faciatis & expleatis in forma predicta, facturi inde quod ad Iusticiam pertinet, secundum legem & consuetudinem regni nostri Anglie : Salvis nobis amerciamenis, & alijs ad nos inde spectantibus.

Mandamus etiam tenore presentium vicecomiti nostro Cantabrigie, quod ad certos dies & loca ( qua vos vel aliqui huiusmodi duo vel plures vestrum ut predictum est, ei ut predictum est, scire facereis ) venire faciat coram vobis vel huiusmodi duobus vel pluribus vestrum ( ut dictum est ) tot & tales probos & legales homines de balliva sua ( tam infra libertates quam extra ) per quos rei veritas in premissis melius sciri poterit & inquiri.

Assignavimus denique te prefatum Johannem Cuts Militem, Custod. Rotulorum pacis nostra in dicto Comitatu nostro. De propria tuanda & loca predicta, Brevia, Præcepta, Processus, & indictamenta predicta, Coram te & dictis sociis tuis, venire facias, ut ea inspiciantur & debito fine terminentur, sicut predictum est. In cuius rei testimonium, &c. Datum, &c.

This Commission hath two parts, containing the power of the Justices of Peace.

The first Assignavimus ( or first part ) of the Commission doth give power to any one Justice of Peace ( more, or all ) to keepe, and cause to be kept the peace, and all Ordinances and Statutes made for the conservation of the peace, and for the quiet government of the people : As Stat. in inch. namely, the Statutes made for Hue and Cry after Felons ; And the 13. E. 112. Statutes made against Murtherers, Robbers, Felons, Night-walkers, E 56. 2. E. Affrayers, Armor worne in terrorum, Riots, Forcible Entries, and all 33.

other force and violence ; all which be directly against the Peace. The particulars whereof you shall find more fully hereafter, and most of them under their proper titles.

*Lambert 46.* By this first clause in the Commission, the Justices of Peace have, as well all the ancient power touching the Peace, which the Conservators of the Peace had by the Common Law, as also that whole authority which the Statutes have since added thereto.

The meanes which the Justices of Peace must use for the keeping of the Peace, and for the execution of these Statutes, is as followeth :

For to prevent the breach of the Peace, the Justice of Peace may send his Warrant for the party, and may take sufficient sureties of him ( by Recognizance ) for keeping the Peace, or for the good behaviour, ( as the case shall require : ) And may send the party to the Gaole for not finding such sureties.

*Lambert 47.* But for these Statutes made for the Peace, they are to be executed according to such prescript and order, as themselves doe deliver ; wherein, if no power at all be expressly given to any one Justice of Peace alone, then can hee not otherwise compell the observation thereof ( as it seemeth ) than by admonition onely : In which behalfe if hee shall not be obeyed, hee may preferre the cause at the Sessions, and to worke it to a presentment upon the Stat<sup>s</sup>. And so ( by the helpe of his fellow Justices ) to heare and determine thereof, as Law requireth.

And here note, that whereas before the making of the Statute. 1. E. 3. cap. 16. there were no Justices of Peace within this Realme ( but onely conservators of the Peace, as is before shewed : ) And whereas, by the Commission of the Peace presently after, and to this day, the Justices of Peace had, and still have the Statute of Winchester given them in charge, to execute the same ; which Statute of Winchester ( being made 13. E. 1. ) was long before there were any Justices of Peace : by this it may appeare, that the King by his Commission may commit the execution of the Statutes and Lawes to whom he shall please. And so also a Justice of Peace, by vertue of the Commission may execute any Statute, whereunto he shall be enabled by the said Commission, although there shall be no such expresse power given to him so to doe, by the words or letter of the same Statute.

The second *Assignavimus* in the Commission, doth give authority to any two Justices of the Peace ( or more, the one being of the *Quorum* ) in these five things following.

1 To inquire ( by a Jury ) of all offences mentioned within the Commission.

2 To



2 To take, and view all Indictments or presentments of the Jury.

3 To grant out processe against the offenders, thereby to cause them to come and answer.

4 To take and trie all such offences (upon any former or future indictments taken before themselves, or before any other Justices of the Peace) after the offenders be come in.

5 To determine thereof, by giving judgement, and inflicting punishment upon the offenders, according to the Lawes and Statutes.

But all the businesse included within the second *Assignavimus*, belongeth to the Sessions of the peace; And therefore I leave (here) to write any further thereof.

Note also, that there be divers Statutes which be not specified within the Commission, and yet are committed to the charge and care of the Justices of Peace; But all such Statutes which doe give expressly any power or authority to the Justices of Peace, are to them a sufficient warrant and commission of themselves, although they be not recited in the Commission: And all such Statutes are also to be executed by them according as the same Statutes themselves doe severally prescribe and set downe.

And for that most of the businesse, and practice of the Justices of the Peace doth consist and lie in the execution of such Statutes as are committed to their charge (whether they be specified in the Commission, or not specified there) the numbers of which Statutes are exceedingly increased of late yeares, to the overburthening of all the Justices of Peace: And (the rather) to give some little helpe to such Justices of Peace, who (being destitute of the assistance of such as are learned in the Lawes) are daily to administer Justice, and to execute their office at home, and out of their Sessions; I have for their better ease herein, endeavoured (in this Treatise) to set downe more orderly and particularly the severall parts and branches of every such Statute by it selfe, under their proper titles, with further referments to the Statutes themselves at large, or to the abridgements.

## CAP. 6.

**T**HE Power and Authority of the Justices of Peace (as well given Their power by the said Commission, as by the Statutes) is in some cases Ministeriall or Regular, and limited as a Minister onely; and in some other cases Judiciall or Absolute, and as a Judge.

Ministeriall,

Ministeriall, when hee is thereto commanded by an higher-Authority :

As upon { A *Supplicavit* (out of the Chancery, or Kings Bench) for the taking of surety for the Peace, or good behaviour :  
See hereof *tit. Surety for the Peace. Cap. 73.*  
A Writ upon the Statute of Northampton, upon a Forcible Entrie : See hereof *tit. Forcible Entrie. Cap. 22.*

In the execution of which two writs, the Justice of Peace may proceed no further, or otherwise, than he is authorized by such Writ ; and is also to returne the Writ, and to certifie his doings therein, into the Court whence the Writ came.

But in all other cases within their authority, the power of the Justices of Peace, seemeth to be Absolute (in some manner) so as they and every of them, may of their owne power proceed *ex officio*, and as a Judge ; yet this their power is also limited, for they may neither hang a man for a trespassse, nor fine him for a felony, but must proceed in all things according as they are prescribed by the Commission, and by the said severall Statutes.

Discretion. And yet for that all considerable circumstances can neither bee comprehended in the Commission, nor foreseene at the time of the making of the Statutes, therfore oftentimes some things are referred to the consideration of the Justices of Peace, and left to be supplied by them in their discretion.

The Commission of the Peace (in it selfe) doth leave little (or nothing) to the discretion of the Justices of Peace ; but doth limit them to proceed *secundum Leges, Consuetudines, Ordinationes & Statuta*. And indeed to leave too much to discretion, were to open a gap to corruption.

But by some late Statutes, some things are (therein by speciall words) referred to the discretion of the Justices of Peace ; some out of Sessions, and some at their Sessions.

I will here onely set downe some particulars of such things as are referred to their discretions out of their Sessions.

*Some things referred to the discretion of one Iustice of Peace out of the Sessions, which you may more fully see hereafter in this Booke, in the severall Titles here under written.*

Fifth-dayes. **F**lesh killed in Lent, one Justice of Peace may give to the poore at his discretion.

One Justice may compell any person meet (in his discretion) to bee bound an Apprentice.

One Justice of Peace may cause all such persons as be meet to labour Labourers (by his discretion) to work in Harvest and Hay time.

Malts that be deceitfull, may be sold, &c. at such reasonable prices, as Malts. one Justice of Peace (in his discretion) shall think expedient.

One Justice of Peace (as it seemeth) may (by his discretion) give Plague, directions to the Searchers, Watchmen, and Keepers, &c. of persons infected with the plague. See *Crompt. 122, b.*

Trespassers in Corn, Orchards, Hedges, or Woods, which (in the Trespassers discretion of the Justice) are not thought able to give satisfaction, shall be whipped.

It seems that one Justice of Peace may heare and determine by examination or otherwise, by his discretion, the offences committed in Tyle-making. Tyle.

*Some things referred to the discretion of two Iustices of Peace out of the Sessions.*

**T**wo Justices may allow and discharge Ale-house-keepers, as they Alehouses. shall think meet.

Two Justices may take Recognisance of Ale-house-keepers for keeping good orders &c. according to their discretions.

Two Justices may appoint Over-seers of Woollen Cloth by the yeer, Cloth, or for shorter time, by their discretions.

Clothiers, their workfolks imbezeling any part, shall be punished, &c. by the discretion of two Justices.

Two Justices may grant their Warrant to call before them any person or persons, which in their discretion shall be thought fit to discover any offence in the making of deceivable Woollen Cloth, &c. 21 Jac. cap. 18.

Servants, &c. assaulting their Master, may be imprisoned for one Labourers yeer, or lesse, at the discretion of two Justices.

Two Justices may (by their discretion) compell women to serve, and for such wages, and in such sort, as they they think meet.

Two Justices may tax others of the County (by their discretions) to- Plague. wards the relief of places infected, &c.

Two Justices may tax any in the Hundred (by their discretions) to- Poore. wards the relief of the poore of any Town that is over-charged.

Two Justices may dispose of all forfeitures, to grow upon the Statutes of Rogues at their discretions, &c. Rogues.



**Robbery.** Two Justices may assesse (according to their discretions) proportionably, all the Parishes within the Hundred, towards a contribution, for the parties charged upon a robbery, &c.

**Souldiers.** Two Justices shall take order (by their discretion) to set poore Souldiers, &c. to work; that cannot get work, and for want of work may tax the Hundred (by their discretions) for the reliefe of such Souldiers, &c.

**Weights.** Two Justices may fine (by their discretion) the head Officers in Boroughs and Market Towns, that doe not view, &c. all Weights and Measures; or doe not break and burn the defective.

Two Justices may fine (by their discretions) all buyers and sellers with unlawfull Weights and Measures.

There be some other Statutes, and some other Cases, wherein the discretion of the Justices of Peace (out of their Sessions) is tolerated: but the counsell of Cicero herein is to be observed; *Sapientis est Iudicis cogitare tantum sibi esse permissum, quantum sit commissum ac creditum.*

**Cas. 101.** Also the sayings of the right honorable, and late Reverend Judge and  
**C. 10. 140.** Sage of the Law (in his fift part in *Rooks* Case and in his tenth part in *Kightleyes* Case) are worthy observation, *sc.* That discretion is a knowledge or understanding to discerne betweene truth and fallshood, betweene right and wrong, betweene shadows and substance, between equity and colourable glosses and pretences, and not to doe according to our wils and private affections, for *talis discretio discretionem confundit*; and therefore in both the recited Cases, it was holden, that though the words in the Commission of Sewers, doe give authority to those Commissioners to doe according to their discretions, that yet their discretion ought to be limited and bounded with the Rules of Reason, Law, and Justice; and their proceedings must be *secundum Legem & Consuetudinem Angliae*; and so of other like Commissioners. Againe, Discretion (saith he) is *scire vel discernere per legem quid sit justum: viz.* to discern, by the right line of Law, and not by private opinion, *Co. L. 227.* and therefore every Judge, Justice, (or Commissioner) ought to have *duos Sales, viz. Saleem sapientia, ne sit insipidus; Et saleem conscientia, ne sit diabolus.*

And (as Master *Lambert* well said) no way better shall the discretion of a Justice of Peace appear, than if he (remembring that he is *lex agens*) shall contain himself within the Lists of Law, and shall not use his discretion, but onely where both the Law permitteth, and the present case requireth.

In all cases therefore where the Statutes doe refer the triall of offenders;

ders, (or hearing and determining of offences) to the discretion of the Justice or Justices of Peace, out of Sessions; it is very requisite, that upon such triall or hearing, the said Justices take due examination (of the offenders themselves, and also of credible witnesses) as well concerning the fact it selfe, as the circumstances thereof, and upon confession, or other due proof of the offence, then to proceed according to Law and Justice.

But not to denounce or give sentence before the party be cited; and heard to answer for himself; For this defence is allowed by Gods Law. *Gen. 3.9. Adam*, where art thou? and *Gen. 4.9. Where* is thy brother *Abel*? And in the case of the five Cities, I will go down and see, *Genes. 18.21.*

Note, that in all cases where the Statute referreth the triall; &c. to the discretion of the Justices, the said Statutes themselves seeme also to enable the said Justices of Peace, to take the examinations of Witnesses, and that upon oath: *vide sit.* Heare and Determine, *cap. 66.*

Note further, that the Justices of Peace, out of their Sessions, are now armed with far more ample authority and power, than the ancient Conservators of the Peace were: for the Justices of Peace have double power given them, the one of Jurisdiction, to convent the offenders before them (by their Warrant,) and (in divers cases out of their Sessions) to examine, heare and determine the cause; the other of Coertion (*sc.* after the cause heard) to constrain them to the obedience and observance of their order and decree (which notwithstanding must be according to the rules of Law and Justice, as is afore said:) whereas the ancient Conservators of the Peace had no jurisdiction or authority at all, either to convent the offender before them, or to examine, heare or determine the cause; but had amely coercion, prehension (or punishment of an offender) in some few cases, as you may see before, *cap. 1.*

And here I must further put the Justices of Peace in mind, that their *Pla. 37.* authority and power is limited to be by them exercised, onely within the Countie or Counties where they be in Commission; and yet in that or those County or Counties, the Justice of Peace of the County must not intermeddle in any City there, which is a County of it selfe, nor in any City or Corporate Town there, (though it be no County of it selfe, *Lamb. 48.* but within the County) which have their proper Justices of Peace within themselves, by the Kings Charter, or Commission. (specially if in *69.* such Charter there be any speciall words of prohibition, that the Justices *Crompt. 8.* of the Shire: *Non se intromittant, &c.*) except such County Justices, *et 181.* shall also be in Commission in such City or Town Corporate;

But in other Corporate Towns which have not their proper Justices of Peace; as also in all Liberties and Franchises; (within the County) <sup>30 H.7.6,7</sup> which have the return of Writs, but have not their proper Justices; there <sup>Crom. ibid.</sup> the Justices of the Peace of the County, ought to execute their authority, and that by the words of their Commission.

Again, if a Parish shall extend into two or more Counties; or if part thereof shall lie within the Liberties of any City or Towne Corporate (which have their proper Justices) and part without, then as well the <sup>See hic tit. Poore.</sup> Justices of Peace of every County, as also the Justices (or Officers) of such City or Town Corporate shall intermeddle only within their own proper and distinct Limits and bounds (*sc.* within so much of the said Parish, &c. as lyeth within their severall Liberties and Limits) and not to invade or deale in other jurisdictions; for it shall be against Law and Reason; where offices and jurisdictions are severall, that the one should intermeddle within the jurisdictions of the other.

Neither shall any Justice of Peace deal in, or punish any trespasse or other like offence, committed in any other County (against any penall Statute) though such offender shall be brought before him (see the Commission the first *Assig. Et postea tit.* Guns, Labourers; and Partridges) except the Statute shall specially enable them thereto, as the Statutes, <sup>33 H.8 ca.6</sup> 1 *fac.* & 7 *fac.* Which doe enable the Justice of the County, where the <sup>5 Eliz. P.12</sup> offence shall be committed, or the offender apprehended, (see *tit. Partridges*) and the like: or that it be for matters of the Peace, or in cases of Felony (see *tit. Affrayes and Felony.*)

Neither shall any Justice of Peace, for the time that he shall make his abode, or be out of the County (where he is in Commission) intermeddle to take any Recognizance, or any examination, or otherwise to exercise his authority in any matter, that shall happen within the County where he is in Commission; neither can he cause one to be brought before him out of the County where he is in Commission, into the other County; for being out of the County where he is in Commission, hee is but as a private man. See *hic tit. Affray, Imprisonment, Robbery, & Warrants.* & *Plo. 37. & 13 E.4.8.*

And yet a Sheriff being out of his County, may make a Pannell, or may make return of any Writ. *9 H.4.1.*

Now my purpose is to set down more particularly, what things the Justices of Peace out of their Sessions of the Peace, may doe in the execution of their Commission; or of the Statutes wherewith they are charged. And herein you must observe that some things are permitted to be executed by any one, two, or more Justices; and some other things are



are more specially appointed and appropriated (by some Statutes) to some one certain Justice of Peace; or to two, or mo Justices; either in regard that such Justice or Justices, is or are next the place, or are of the *Quorum*, or the like.

And here note, that whatsoever any one Justice of Peace alone may do (either for the keeping of the Peace, or in other execution of the Commission, or Statutes) the same also may lawfully be done and performed, by any two, or mo Justices.

But where the Law giveth authority to two, there one alone cannot <sup>Co. 4. 46.</sup> execute this: For *Vna persona non potest supplere vicem duarum; & plus vident oculi quam oculus.* See Co. 5. 94. & Pl. 393. a. b. Co. L. 181.

And yet where a Statute appointeth a thing to be done by two Justices of Peace (or mo,) if the offence be any misdemeanour, or matter against the Peace, there, upon complaint made (of the offence) to any one of those Justices of Peace, it seemeth that one of those Justices may grant out his Warrant to attach the offender, and to bring him before the same Justice, and the other Justice so appointed (at some convenient place) and then they to heare and determine the same: Also upon complaint thereof made to any other Justice, hee may give warrant to bring the offender before himself or any other Justice, to finde sureties for his appearance at the next generall Sessions, there to make answer to such his offence: or else he may bind the offender to the good behaviour, and so to appeare at the next Sessions, if the said Justice shall see any just cause so to doe. But one Justice of Peace alone may not in any wise meddle to heare and determine the same.

Also when things by Statute are appropriated to some one certain Justice, or to moe, there such Justice or Justices are to pursue such their authority accordingly: and yet if such Justice or Justices shall therein joyn with any other Justice of the same County, it may seeme no lesse <sup>Co. 11. 92.]</sup> lawfull and warrantable, *tamen quere & vide Co. 11. 92.* where an authority is given to four, or to one of them; if two of them shall execute this, it seemeth they have not pursued their authority. So if an authority be given to three, *conjunctim & divisim*, if two of them do it in the absence of the third, it is void. *Dyer 62.* for that the authority is not pursued. But Co. L. 181. b. taketh a difference where the thing is *pro bono publico*, and where *pro privato*; as if a Sheriff upon a *Capias* maketh his Warrant to foure or three joyntly or severally to arrest the Defendant, two of them may arrest him, for that it is for the execution of Justice, which is *pro bono publico*, and therefore shall be more favourably expounded, then when it is only for private.

Pl. 26. b.

But to come to the former cases of our Justices of Peace, there seemeth a generall rule to be put in *Stradlings* case (in *M. Pl.*) that when a thing is appointed by any Statute to be done by, or before one person certain, that such thing cannot be done by or before any other; but that it ought to be done as the Statute hath appointed, and by such expresse designation of one (or power given to one) certain person, all others are excluded.

See Co. 11.  
59 & 64.  
18 El. 3.

And yet whereas by the Statute of 18 *Eliz.* the order to be taken for a bastard child, is appropriated to two Justices of Peace (one being of the *Quorum*) in or next unto the Parish where such child shall be born; if two such Justices cannot agree upon the reputed Father (or in making such order as the Statute requireth, or in other execution of that Statute) *Quere* what is to be done, & *vide hic cap. 11.* But I have knowne the case lately moved to the Judges of Assise, who thought it fit that such difference between the two Justices of Peace, should be referred to the hearing of the whole Bench, and the matter to be re-examined by them, and what order should be therein set down by the Bench, the same to stand good.

But in such things appropriate to some one or more Justices of Peace, if without such Justice or Justices, all (or any of) the residue of the Justices of that County shal intermeddle therein, such their doings seemeth no ways warrantable, but such their proceedings to be *Coram non Iudice*, and that there is no necessity to obey them therein, as being no lawfull Judges of the cause.

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*What things one Justice of Peace alone, may doe out of the Sessions:  
and where the aid or assistance of two Iustices of Peace  
(or more) is required. Alehouses, &c.*

CAP. 7.

**T**He true and principall use of Innes, Alehouses, and Victualling houses, is twofold, *sc.* either for the receit, relief, and lodging of wayfaring people travelling from place to place about their necessary businesse, or for the necessary supply of the wants of such poore persons as are not able by greater quantities to make their provision of victuals: and is not meant for entertainment or harbouring of lewd or idle people, to spend or consume their money or time there, (as appeareth by the preamble of the Statute made 1 *Jac. Reg. 6.*) And therefore to prevent the mischiefs, and great disorders hapning daily by the abuses of such hou-

houses, his said Majesty of late famous memory, and our now gracious Sovereigne Lord King *Charles*, have graciously bin pleased, that divers good and profitable Laws should be made for the redresse thereof, as followeth.

Every keeper of Taverne, (keeping also an Inne or victualling in his house) and every Alehouse-keeper, Inne-keeper, and Victualler, which shall suffer any Townsman or any handicraftsman, or labourer, working in the same City or Town, to remain and continue drinking in their said house, (except such as shall be invited thither by a Traveller, and during his necessary aboad there; and except handicraftsmen, labourers, and workmen, upon the working day, for one hour at dinner, or sojourning or lodging there; or except they be allowed by two Justices of Peace) the said offence being seen by any Justice of Peace within his Limits, or being confessed by the offender, before the Justice of Peace, or being proved before any Justice of Peace, by one witnesse upon oath, every such Tavernier, Alehouse-keeper, &c. shall forfeit for every such offence, ten shillings.

And note, that the voluntary confession (before the Justice of Peace, or other person authorized to minister the oath) of any offender against either of the Statutes of 1 *Iac. cap. 9.* or 4 *Iac. cap. 5.* shall suffice to convince the person so offending: and after such confession, the oath of the party so confessing, shall be taken, and be a sufficient proof against any other offending at the same time, 21 *Iac. Reg. cap. 7.*

If any Tavernier (keeping also an Inne, or Victualling in his house) or any Inne-keeper, Alehouse-keeper or Victualler, shall at any time utter or sell within his house, or without, lesse than one full Ale-quart of the best Beer or Ale for one peny, and of the small two quarts for one peny (the said offence being proved before any Justice of Peace, by one witnesse upon oath) then every such Tavernier, Inne-keeper; &c. shall forfeit for every such offence twenty shillings.

And yet note, that wheresoever any conviction shall be before the Justice of Peace, by or upon the oath or testimony of any other person (than the delinquent himselfe) there the Justice of Peace must first send for, or convent the Delinquent before him, to make answer, &c. and to heare and examine him of the offence, &c. for it may be that hee can make sufficient defence or excuse of the fact. And this was the direction of Sir *Nicholas Hyde*, Lord chief Justice of the Kings Bench; and well agreeth with the rule here before, *cap. 2. Qui aliquid statuerit parte inaudita altera, equum licet statuerit, haud equum est.*

Every person that shall continue drinking in any Inne or Alehouse,  
 &c.



1 *Iac. 5.*  
21 *Iac. 7.*

&c. in the Town where he then dwelleth (contrary to the former Statute made *primo Iac.*) the said offence being seen by any Justice of Peace, or being proved before any Justice of Peace, as aforesaid, such persons shall forfeit for every such offence, three shillings foure pence.

If any other person (wheresoever his or their habitation or abiding be) shall be found by view of any Justice of Peace or by his own confession, or proof of one witnesse) to be tipling in any Inne, Alehouse, or Victualling house, every such person shall be adjudged to be within the said Statutes of 1 *Iac. cap. 9.* & 4 *Iac. cap. 5.* as if he inhabited and dwelt in the City, Town Corporate, or other Town or Village, where the said Inne, Alehouse, or Victualling house is or shall be, where he shall be so found tipling; and shall incur the like penalty, and the same to be in such sort levied and disposed, as in the said Act is expressed, concerning such as there inhabit: And the voluntary confession of such an offender shall suffice to convince himself; and after his oath shall be a sufficient proof against any other offending at that time, 21 *Iac. cap. 7.*

1 *Caroli 4.*

Every Taverner (keeping also an Inne, or Victualling in his house) and every Inne-keeper, Alehouse-keeper, and other Victuallers, which shall suffer any person (wheresoever his dwelling be) to tipple in the said house contrary to the true intent of any of the said former Statutes shall be adjudged within the Statute, 1 *Iac. cap. 9.*

So that now by these Statutes, no person may come to tipple in any such Taverne, or in any Inne, Alehouse, or Victualling house, in the same Town where he dwelleth, nor within two miles thereof, except he be a Traveller; And so Sir Francis Harvey Knight, delivered it in his charge, at Cambridge Summer Assises. An. 1629. But the Statute 21 *Ia.* & 1 *Caroli*, seeme to forbid all tipling in such house, wheresoever they be, and by whomsoever it be.

Any Justice of Peace in any County (and any Justice of Peace, or other head Officer, in any City or Towne Corporate, within their Limits) shall have power (upon his own view, confession of the party, or proof of one witnesse upon oath) to convince any person of drunkenness, whereby such persons so convicted shall incur the forfeiture of five shillings for every such offence, to be paid within one week next after such conviction, into the hands of the Church-wardens of the Parish where the offence shall be committed, &c. And if the offender be not able to pay the said sum of five shillings, then he shall be committed to the Stocks for every such offence, there to remayne by the space of six houres, 4 *Iac. 5.* 21 *Iac. 7.*

And for the second offence of drunkenness, every person convicted there-

thereof as aforesaid, shall be bound with two sureties in the sum of ten pounds with condition for the good behaviour, by any one Justice of Peace, or other head officer aforesaid (as it seemeth) 21 *Iac. cap. 7.* And for want of such sureties to be sent to the Gaol.

Now for to know a drunken man the better, the Scripture describeth them to stagger and reel to and fro, *Iob 12. 25. Esay 24. 20.* And so where the same legs which carry a man into the house, cannot bring him out again, it is a sufficient signe of drunkenness.

Every Justice of Peace (within his Limits) hath authority to minister the said oath to such witnesses. 21 *Iac. cap. 7.* 1 *Iac. 9.*  
P. 6.

All and every the forfeitures aforesaid, shall be to the use of the poore of the Parish, where such offence shall be committed: and the said forfeitures are to be levied by distresse and detainer of the offenders goods, (and after six days by sale thereof, &c.) by the Constables or Church-wardens of the same Parish, upon a Warrant from any one (or more) Justices of Peace, under his or their hand and seale, 1 *Iac. cap. 9. 21. Jac. cap. 7.* 1 & 4 *Iac.*  
P. 7. 8.

The said forfeitures of the Taverner, Alehouse-keeper, Inne-keepers, and Viſtuallers, being distrained for as aforesaid, if within six days next ensuing they shall not pay the said forfeiture, then may the Constables or Church-wardens, by vertue of the said Warrant, presently apprise and sell the said distresse; but they must deliver the surplusage to the party of whom the distresse was taken. 1 *Iac. 9. P. 7.*

For every offence aforesaid, the Alehouse-keeper, Inne-keeper, and other Viſtualler, for want of sufficient distresse to be taken for such forfeitures, shall (by any one Justice of Peace) be committed to the common Gaol, there to remayn untill the said penalty be payed. 1 *Iac. 9.*  
P. 7.

Every Townsman, or other person whatsoever, &c. that shall continue drinking, or be found tipling in any Inne, Alehouse, or other Viſtualling house contrary to the Statute, (for want of sufficient distresse, and not being able to pay the said forfeiture of three shillings four pence) shall be set in the Stocks for every such offence; four houres (upon warrant or commandement, from any one such Justice of Peace) 21 *Iac. 7.* 4 *Iac. 5.*

If the Constables and Church-wardens, shall neglect to levy, or shall not levy the said severall forfeitures of Alehouse-keepers, &c. suffering tipling in their houses; or for their measure of Ale or Beere; or in default of distresse shall neglect by twenty days, to certifye the same defaults of distresse to the Justice of Peace; then every such Constable and Church-warden shall forfeit for every such default forty shillings to

the use of the poore, to be levied by distresse (of the offenders goods) by warrant made to any other indifferent person, from any one (or more) Iustices of Peace under their hand and seale: The said distresse to be taken and detained for the said forfeiture, for the space of six days, within which time if payment be not made, then the same goods to be presently preised and sold; and the surpluse to be delivered to the party, &c. And for want of sufficient distresse, such Constables and Church-wardens to be (by any such Iustice of Peace) committed to the common Gaole, there to remain untill they have payed the same forfeiture.

Also if any Constable, or other inferiour Officer of the Parish, shall neglect to execute the Iustices Warrant, for the due correction of, or for the levying of the penalties of offenders in drunkenness, such Constable, &c. shall forfeit ten shillings to the use of the poore, &c. and to be levied as aforesaid, 4 *Iac.* 5.

Br. Acc.  
sno<sup>o</sup>. 92. &  
76.  
§ 4.3.

If a common, Inne-holder, or Alehouse-keeper will not lodge a traveller, any Constable (or Iustice of Peace) may compell him thereto, but how the Officer shall compell him, *quare*: it seemeth that all the Officer can do, is either to cause such Alehouse-keeper to be suppressed; or else to present or preferre such offence of an Inne-keeper, or Alehouse-keeper, at the Assises or Sessions of the Peace, that so such offender may be thereupon indicted. See the Commission.

And at Lent Assises, *Anno Domini 1622.* Sir James Ley (Knight and Baronet, Lord chiefe Iustice of the Kings Bench) delivered it in his charge, That an Inne-keeper or Alehouse-keeper offending herein, might be indicted, fined, and imprisoned for the same, or else, that the party grieved might have his action, *sur le Case*, against the Inne-keeper, or Alehouse-keeper refusing to lodge him. *Vide Cro. 50. & 4 H. 7. 22.*

But no Inne-holder, Alehouse-keeper, or other Victualler, shall be compelled to sell, or let any traveller or other, to have any victuals or lodging, except the party shall first render and pay ready money for the same, if it be required. 10 *H. 7. 8. 5. E. 4. 3. Co. 9. 87. b.*

Two Iusti-  
ces.  
§ E. 6. 25.  
P. 24

Any two Iustices of Peace (the one being of the *Quorum*) may allow the keeping of any common Ale-house, or Tipling house; and shall (from time to time) take Bond with surety by Recognisance of such Alehouse-keepers, as well against the using of unlawfull games, as also for the keeping of good rule and order in their houses according to the discretions of the same Iustices.

There shall be paid for such Recognisance but 12d. And the said Iustices shall certifie the same Recognisance at their next Quarter Sessions (upon pain of five Marks.) *ibidem.*

Any



Any two Iustices of Peace (the one being of the *Quorum*) may re-<sup>5 E. 6. 25.</sup> move, discharge, and put downe any Alehouse where they shall think<sup>P. 1.</sup> meet.

The Alehouse-keeper put down and discharged by any two such Iustices of Peace, cannot be allowed again by any other two, or mo Justice of Peace, except it be in open Sessions; (as Sir Peter Warberton delivered in his charge at *Cambridge Assises, Anno Dom. 1613.*)

Any two Justices of Peace (the one being of the *Quorum*) may com-<sup>P. 4.</sup> mit to prison in the common Gaol, (for three days without bail) those<sup>5 E. 6. 25.</sup> that keep common Alehouses, or that use common selling of Ale or Beer, obstinately of their own authority, without allowance by two such Justices; or contrary to the commandement of two such Justices. And the said two such Justices (before the delivery of such offenders) shall take Recognisance of them, with two Sureties, that he or they shall keep no more a common Alehouse, or use commonly selling of Ale or Beer, according to the discretion of the same Justices; and shall certifie such Recognisance, discharge, and offence, at their next quarter Sessions: which certificate shall be a sufficient conviction in Law of the same offence, without any further triall thereof to be had: And for such offence the fine of 20 shillings shall be assessed in open Sessions.

But for that this former Law made, 5 *Ed. 6.* hath not wrought such reformation as was intended, it is further enacted by another Statute made 3 *Caroli Regis, cap. 3.* That if any person shall upon his own authority (not being thereunto lawfully licenced) take upon him, or her, to keep a common Alehouse, or Tipling house, or shall commonly use selling of Ale, Beer, Cyder, or Perry, that every such person for every such offence, shall forfeit 20 shillings to the use of the poor of the Parish, where such offence shall be committed: The same offence being viewed by any Iustice of Peace (Major, or other head Officer of any City or Town Corporate) within their limits, or confessed by the offender, or<sup>1 Iustice.</sup> proved by the oath of two witnesses.

Every such Justice of Peace (or other head Officer aforesaid) have power to minister an oath to such witnesses. 3 *Car. 3.*

Also every such Iustice (and other head Officer aforesaid) within their severall limits may make their Warrant to the Constables or Churchwardens of the Parish where the said offence shall be committed, to levy the same 20 shillings, by distresse, of the offenders goods; And for default of satisfaction, within three days next ensuing the said distresse, to be appraised and sold, and the overplus to be delivered to the offender: And this to be onely for the first offence. *ibidem.*

1 Offence.

If such offender shall not have sufficient goods whereby to levy the said twenty shillings by distresse, or shall not pay the said twenty shillings within six days after such conviction, then the said Justice (and other head Officer aforesaid) shall commit the said offender to the Constable where the offence shall be committed, or the party apprehended, to be openly whipped, *ibidem*.

If the Constable, &c. shall neglect to execute the said Warrant, or doe refuse, or do not execute upon the offender the said punishment of whipping, the said Justice (or Officer) may commit the Constable, &c. to the common Gaole without baile, untill the said offender shall be by him punished as aforesaid, or untill the said Constable &c. shall pay forty shillings to the use of the poor of the Parish. *ibidem*.

2. Offen.

The unlicenced Ale-house-keeper, for such his second offence, shall be committed to the house of correction for one moneth. *ibidem*.

3. Offen.

And for every such offence after, hee shall be committed to the house of correction, there to remain untill hee be delivered by order from the generall Sessions, *ibidem*.

Provided, that such offenders shall not be punished twice for the same offence, *sc.* shall not be punished both by the Statute made *An. 5. Ed. 6.* and by this Statute of 3 *Caroli Regis*.

If a feine Coyvert, against the will of her husband shall keep an Ale-house, or shall use common selling of Ale or Beere, without licence, &c. the husband is punishable therefore, and the wife also (by the discretion of the Justices of Peace) may be imprisoned for such her personall and wilfull offence, untill she shall find sureties for her good behaviour, and that she shall no more use the same.

5 Ed. 6.  
P. 1. 4.

Also it seemeth (by the letter of the Statute) that the Alehouse-keeper put down or discharged by two such Justices, if (contrary to their commandement) he shall use common selling of Beer or Ale again, though allowed by two other Justices of Peace, out of the generall Sessions, yet the two Justices that first discharged him, may put him downe againe, and may commit him to the Gaol for selling contrary to their commandement.

5 E. 6.  
P. 5.

And yet the Statute alloweth common viſtualling, and selling of Ale or Beer in Fairs, though unlicenced, &c. 3 *Caroli* 3.

If an Alehouse-keeper which is not licenced, shall suffer Towns-men, or any other person, to tipple in his house; or shall break the Assise &c. he is punishable for the same, by the Statute made, *prima La. Reg. c. 9.* and besides he may also be punished by force of the said Statute, made 5 *Ed. 6. cap. 25.* or 3 *Caroli* 3. for selling Beer, &c. without licence. Also if any Towns-

Townsmen, or other person, shall be found to be tipling in any unlicensed Alehouse, such persons (as it seemeth) are also punishable by the same Statute made *primo Jacobi Regis cap. 9.*

Any two Justices of Peace may give allowance to Labourers, &c. *P. 6. 1* for urgent and necessary occasions, to remain in an Inne, Alehouse, or *1 Lic. 9:* Victualling house.

Common Innes are appointed for travellers and wayfaring men, *Co. 8. Co. 8. 31.* 32. and therefore if any Inne-keeper, shall suffer persons inhabiting in the same Towne, or any other persons (contrary to the Statutes) to be (usually) tipling in his house, such an Inne-keeper may be accounted as well an Alehouse-keeper, as an Inne-keeper; And such Inne-keepers may be bound by Recognizance with sureties for the keeping of good order, as Alehouse-keepers are; and so Judge Warberton delivered it in his charge at Cambridge Assises, *An. 1613.* And therewith also agreed Sir James Ley, and Sir John Dodderidge in their severall charges at Cambridge Assises, *Anno Dom. 1621.* for that such Inne-keepers (said they) do pervert the end for which they were first appointed. Or else it seemeth they may be dealt withall, *sc.* punished; or committed as Alehouse-keepers without licence, (by two Justices of Peace, asforesaid:) Or they may be indicted therefore at the Assises or Sessions of Peace, by the Commission of the Peace.

Also it hath bin agreed for Law, That such Innes as have bin erected *Comp. 77.* since the Statute of *5 Ed. 6. cap. 25.* and were not Innes before, ought to have Licence; and that such Inne-keepers are to be bound by Recognizance, with sureties, for keeping of good orders, as Alehouse-keepers are.

And yet at Lent Assises, *Anno Dom. 1621.* Sir James Ley delivered in his charge, that Innes were Hosteries, by the common Law, and that every man might erect and keep an Inne or an Hostery, so as they were *probi homines*, men of good conversation, fame, and report, and dwelling in meet places: but yet that they were not worthy of any allowance or licence under the Kings great Seal, &c.

And hee delivered further in his said charge, That if such Innes or Hosteries be used, *ad nocummentum populi Domini Regis, &c. sc.* do keep any disorderly house contrary to the Law; or be mo in number than are needfull, and to the hinderance of other ancient and well governed Innes; that then they may be thereof indicted at the Assises, or Sessions of the Peace, and there may be either fined, or suppressed. And Sir James Ley told me after (at his lodging in Trinity Colledge) that this was the opinion of all the other Judges, upon late conference had among themselves.



But such Innes or Hosteries, if they shall be inconvenient or disordered, in respect either of the Inne-keeper, or of the resort thither, or that the place be unmeet, they are to be suppressed upon an Indictment found at the Assizes, or Sessions.

And if they shall suffer Townsmen, or other persons (usually) to tipple there, they are to be punished as Alehouse-keepers without licence for these Innes or Hosteries are to be allowed onely for Travellers.

*Anno 1616.* His Majesty, in his late Speech in the Star-chamber, hath justly excepted against the abundance of Alehouses, and more specially against the infamous and blinde Alehouses, as being haunts and receipts for Robbers, thieves, Rogues, Vagabonds, and other idle, loose, and sturdie Fellows; and therefore here I thought good to put the Justices of Peace in minde, that in allowing of Alehouses, they have regard, as well to the person, as the place: for all persons are not fit to be allowed for Alehouse-keepers; neither are all places meet for an Alehouse.

The person.

As if the party be in Livery, or a Retainer to any man, Bailiffe of a Hundred or Liberty, Constable, &c, or be one that is not of good fame, conversation, or government; such persons are not fit to be allowed to be Alehouse-keepers. See *Fitz. N.B. 172.* that no Victualler ought to sell victuall, so long as he is in office, &c. *Stat. 12 Ed. 2 cap. 6.*

Again, *Dicitur*, that no person using any Trade, ought to be allowed to keep an Alehouse, for that were to take away the means, and so the life of another; *Tamen quare inde*, for that by the common Law no man is prohibited to use divers Trades, *Vide hic tit. Labourers.*

Also there are some persons, that by Law are disabled to keep an Alehouse, (at least for a certain time:) as,

7 *Iac. 10.*

21 *Iac. 7.*

1 The Alehouse-keeper convicted (according to the Statute *vicefimo primo Iac. 7.*) for suffering Townsmen, &c. (or any other person as it seemeth) to continue drinking in his house, contrary to the said Statute, (which see here before) such Alehouse-keeper is disabled to keepe any Alehouse for three yeers after such conviction. 21 *Iac. cap. 7.*

7 *Iac. 10.*

2 So the Alehouse-keeper convicted (as aforesaid) for not selling one full quart of their best Beer or Ale for one peny, and of the small, two quarts for one peny, (which see in this title a little before) such Alehouse-keeper also is disabled (for three yeers after) to keep an Alehouse 21 *Iac. cap. 7.*

4 *Iac. 3.*

7 *Iac. 10.*

21 *Iac. 7.*

3 The Alehouse keeper that shall continue drinking in another Alehouse or Inne, in the same Town where he dwelleth, (the said offence being seen by any Justice of Peace within his limits, or being proved before any Justice of Peace by two witnesses upon oath) every such Alehouse-

house-keeper also is disabled for three yeers after such conviction, to keep any Alehouse.

4 So the Alehouse-keeper that shall be drunken, and thereof lawfully convicted (by indictment at the Assises, Sessions of Peace, or in a Leet, or otherwise before the Justice of Peace) is disabled for three yeers to keep an Alehouse. 4<sup>l</sup> l. 9.  
7<sup>l</sup> l. 10.  
21<sup>l</sup> l. 7.

An Alehouse-keeper convicted and suppressed for any of the former offences; if he shall be licenced or allowed againe by two or mo Justices of Peace within three yeers, such Licence is void, and he is to be punished as one victualling without Licence. And so it was delivered by Sir *Nicholas Hyde*, at *Cambridge Assises*, *Anno 3 Caroli Regis*. And so it seemeth if he were convicted, though he were not suppressed, if he be after Licenced again within three yeers after such conviction, such Licence is void, &c.

5 The Alehouse-keeper that is discharged or put down by any two Justices of Peace, the one being of the *Quorum*, &c. is also disabled. So as hee cannot be allowed again, except in open Sessions. See *hic antea*.

Also in Towns which are no thorow-fare, the Justices shall doe well to be sparing in allowing of any Alehouse, (except it be at the suit of the chief inhabitants there, and to supply the necessary wants of their poore:) And then Kanikets (onely to sell to the poore, and out of their doores) would suffice, if they were enabled by a Law.

Also the Alehouses to be allowed, are meetest to be about the midst of the Town; but not to be in any blinde corners, where Thieves and Rogues may be harboured; nor in places out of, or distant from the Town, except upon the Rivers side, and where there is great need. The place.

Affray. CAP. 8.

**A**ffray, is derived of the French word *Effrayer*, which signifieth to terrifie, or bring feare; and which the Law understandeth to be a common wrong; and therefore I wil shew you what every man may do in such cases.

Every private man being present before, or in and during the time of an affray, ought to slay the affrayors, and to part them, and to put them in sunder, but may not hurt them, if they resist him; neither may he imprison them, for that he is but a private man. Every private man.

An affray being in the street, if any other shall come with harnesse or

or weapon, to joyn with either party, every person present, or that seeth it, may stay them till the Affray be over.

*Lamb* 134. Also every private man (being present) may stay the Affrayors untill their heat be over, and then may deliver them to the Constable, to imprison them till they finde surety for the Peace: And upon their information it seemeth the Constable may imprison the parties, though the Affray were not in the Constables presence, *hic, cap. 1.*

*3 H. 7. c. 1.* If any person be dangerously hurt in an Affray (or otherwise) every person may arrest the offender, and carry him to the Gaole, or to a Justice of Peace (who is either to bail him untill the next Gaole delivery, or to commit him to the Gaole, untill it be knowne whether the party hurt, will live or die thereon.) *Br. Faux impris. 35. 44.*

*The Constable.* The Constable in such cases is armed with a more large authority, within his jurisdiction for he may and ought in the Kings name to command the Affrayors, or such as are about to make an affray, to avoid or surcease, and to depart (upon pain of imprisonment:) and if the Constable (being present at an affray) doth not his best endeavour to part them, it being presented by Enquest at the Sessions of the Peace, such Constable shall be deeply fined for it.

But where the affray is made out of the presence or sight of the Constable, and one commeth to the Constable and telleth him of it, and wisheth him to go and see the Peace kept, and the Constable doth nothing, but neglecteth his duty therein, it seemeth he shall not be fined by the Justices at their Sessions, upon presentment thereof by the great Enquest. *Crompt. 146. quare tamen, & vide hic, cap. 1. & 5. the Comission, & 121 the forme of the Constables Oath.*

*5 H. 7. 10.* If the affrayors will not depart, but shall draw weapon, or give any blow, the Constable may command the assistance of others for the pacifying of the affray, and may justifie the hurting of them, if they make resistance.

*Lamb. 135.* The Constable may in the Kings name make proclamation, (if the affray be great or dangerous) that the Affrayors shall keep the Kings Peace and depart, &c.

*Lamb. 136.* Also if the affray be great and dangerous, then the Constables may command the Affrayors to prison for a small time, till their heat be over; yea, they may imprison the affrayors till they find sureties for the Peace. And if any of the parties hath received any dangerous hurt in the affray, the Constable ought to arrest and carry the offender to the Gaol, (or to a Justice of Peace) to the end he may find sureties to appeare at the next Gaole delivery: and the Constable may justifie the beating, &c. of such  
an



an offender, if he will not obey the arrest, but make resistance, or flyeth. 38. E. 3. 80  
 Note, that it is properly no affray, unless there bee some weapons 11.  
 drawne, or some stroke given, or offered to be given, or other attempt to Br. Faux  
 such purpose: for if men shall contend onely in hot words, this is no af- imp. 6.  
 fray, neither may the Constable for words onely lay hands upon them  
 unless they shall threaten to kill, beat, or hurt one another, and then Hic cap. 1.  
 may the Constable arrest such persons (to goe before some Iustice of  
 Peace, to find sureties for the keeping of the Peace) and yet such threat-  
 ning is no affray.

If the affray be in an house, and the doores shut, the Constable may  
 breake into the house to see the Peace kept, though none of the parties  
 have taken any hurt.

If the affrayors flie into another mans house, the Constable (in fresh  
 suit) may breake into the house, and apprehend the affrayors, 7. Ed. 3. 19.

If the affrayors flie into another County, the Constable (or Justice  
 of Peace) seeing this, may in fresh suit pursue, or cause them to be pursu- Pl. 37. 2.  
 ed, and to be taken there; but they can then meddle no further, but (as Crompt. 106.  
 every private person may do) to carry them before some Iustice of Peace 6. E. 1. 23.  
 of the County where they are taken, to cause them to find suretie for the  
 Peace.

But if the Affrayors flie into a Franchise within the same County, the Crompt. 146.  
 Constable (or Iustice of Peace) seeing this, may in fresh suit pursue and  
 take them out of such Franchise.

After the affray (it seemeth) the Constable, without a Warrant, can- 38 H. 8. Br.  
 not arrest the affrayors, except some person be in perill of death by some F imp. 6.  
 hurt there received.

Every Iustice of Peace may doe that, which every Constable or pri- The Justice.  
 vate man may doe by the common Law herein.

Besides, every Iustice of Peace (within his limits) may presently af- 9. Ed. 4. 3.  
 ter the affray commit the offenders, untill they have found surety for the Crompt. 106.  
 Peace, if the affray were in his presence. And if the affray were not in 196.  
 his presence, yet upon complaint, or upon his owne discretion, he may  
 after make his warrant to take or commit such offenders, untill they have  
 found surety for the Peace. *Vide tit. Peace, & Suretie for the Peace.*

If an affray be made in the presence of a Iustice of Peace, he may lay Br. Faux  
 hands upon, and arrest the offenders to find sureties for the Peace, and imp. 12. et 33  
 may take away their weapons. 21. H. 7. 22. b. Moore.

And yet by some opinions, the Iustice of Peace in cases of an affray to  
 some purposes hath no further authority than every private man hath:  
 for though the Iustices of Peace (sitting in their Sessions, or out of their

Sessions) may command a man to be attached, who shall make an affray in their presence (and of such things done in their presence, they may make a Record, and certifie the same, which shall be a conviction of the offender) and the Justice of Peace may presently upon the fact command or send such offenders to the Gaole: yet the Justices cannot themselves attach or arrest any man (say they) for any affray, or other thing done in their presence. (no more than a stranger or private person may doe;) but after the affray they may make or grant out their Warrant to attach or arrest the offenders, and may then commit them to the Gaole, except they shall finde sureties for the Peace.

Every Justice of Peace (in his owne discretion; and *ex officio*) may binde all such to the Peace, as in his presence shall strike another, or shall threaten to hurt another, or shall contend onely in hot words. *Vide sit. Sureties for the Peace hic cap. 67.*

F. Just. P.

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10 H. 7. 20

Cromp. 154.

If any person be dangerously hurt in any affray (or otherwise) every Justice of Peace within the yeare and day after such hurt, may commit to the Gaole such offenders, there to remaine untill the day and yeare be expired; or that the said offenders shall finde sureties to appeare at the next generall Gaole delivery, to answer to the felony, if the partie hurt happen to die within the yeare after the hurt. *Vide Stat. 3. H. 7. cap. 1. & Exodus cap. 21. 18, 19.* If the party happen to recover, the offender shall pay to the party hurt, for losing his time, and also for his healing; *ibidem.*

But where the hurt shall be dangerous, or wound mortall, although the Justice may baile the offender, living the partie so hurt, yet it shall be better discretion for the Justice to commit the offender to the Gaole, there to remaine untill there shall appeare some good hope of recovery in the other: And so Sir *Nicholas Hyde* advised at Cambridge Lent Assises, *Anno 5. Caroli Regis.*

3 H. 7. 6.

Br. Fauc

imp. 41.

If an affray or assault shall be made upon a Justice of Peace or Constable, they may not onely defend themselves, but may also apprehend and commit the offenders, untill they have found sureties for the Peace: the Justice of Peace may presently cause them to be arrested, and carried before another Justice, who may send them to the Gaole; And the Constable must commit them to the Stockes for the present, and after carry them before a Justice of Peace, or to the Gaol. *Vide hic postea. c. 67. & 120.*

One Just.

2 E. 3. cap. 3.

Fals.

IF any person shall ride or goe armed, offensively before the Kings Justices, or any other the Kings officers or ministers doing their Office, or

or in Faires, Markets, or else where (by night or by day) in affray of the Kings people (the Sheriffe, and other the Kings Officers, and) every Justice of Peace (upon his owne view, or upon complaint thereof,) may cause them to bee stayed and arrested, and may binde all such to the Peace or good behaviour, (or, for want of sureties, may commit them to the Gaole :) and the said Justice of Peace (as also every Constable) may seize and take away their armour, and other weapons, & shall cause them to be preised, and answered to the King as forfeited : and this the Justice of Peace may do by the first *Assignavimus* in the Commission. See hereof *antea*.

Lambert  
office of a  
Const. 13.

So of such as shall carrie any Guns, Dagges, or Pistols that be charged ; or that shall goe apparelled with privie Coats or Doublets, the Justice may cause them to finde sureties for the Peace, and may take away such weapons, &c. *Vide tit. Suretie for the Peace.*

And yet the Kings servants in his presence ; and Sheriffes and their Officers, and other the Kings Ministers, and such as be in their compagnie assisting them, in executing the Kings Processe, or otherwise in executing of their office ; and all others in pursuing Hue and Cry, where any felony, or other offences against the Peace, be done, may lawfully beare armour or weapons.

2 E. 3. c. 3.  
Co. 5. 72.

Also (it seemeth) that any Justice of Peace may command that weapons be taken from such prisoners, as at any time shall be brought before him.

Also if any servant to husbandry, or to any Artificer, or Victualler, or any Labourer, shall beare any Buckler, Sword, or Dagger, (except they be travelling with their master, or in their masters message) it seemeth every Justice of Peace may imprison them till they have found sureties for the Peace, and may seize and take away their said weapons ; (or may cause the Constable to seize the same, as forfeit) and to present the said weapons at the next Sessions of the Peace. But this Statute seemeth now to be repealed by the Statute made 21. J<sup>a</sup>. 28.

12. R. 2. 6.  
P. 2.

Barrettor.

CAP. 10.

**E**Very Justice of Peace (upon his discretion) may binde to the Peace, or good behaviour, such as are common Barrettors.

2 E. 4. 4.  
Lamb. 79.

Now a common Barrettor is he, who is either a common mover and stirrer up, (or maintainer) of suits in Law in any Court ; or else of quarrels or parts in the Country. Co. L. 368.

Co. 8. 36.



In Court: As if any Court of Record, County-Court, Hundred, or other inferior Courts; any person, by fraud and malice under colour of Law, shall themselves maintaine (or stirre up others unto) multiplicitie of unjust and feigned suits, or informations, (upon small Lawes) or shall maliciously purchase a speciall *Supplicavit* of the Peace, to force the other party to yeeld him composition; all such are Barrettors.

In the County; and these are of three sorts:

In the Countrey. 1 Disturbers of the Peace, viz. such as are either common quarrellers or fighters in their owne cause; or common movers or maintainers of quarrels and affrayes betweene others.

ea. 8. 36.

2 Common takers or detainers (by force, or subtilty) of the possessions of houses, lands, or goods which beene in question or controverfie.

3 Inventers and sowers of false reports, whereby discord ariseth, or may arise betweene neighbours all these are Barrettors.

Yea if one be *Communis seminator litium*, he is a Barrettor.

Or if any man of himselfe, bee *Communis oppressor vicinorum*, (a common oppressor of, or wrangler with, his neighbours) either by unjust, or wrangling Suits, or other oppressions, or deceits, he is a Barrettor.

Or; if one be *Communis pacis perturbator, Calumniator, & Malefactor*, he is a Barrettor. *Crompt. 257.*

ea. 8. 37.

But all such persons must be Common Barrettors, sc. not in one or two, but in many causes.

### Bastardie. CAP. II.

Lamb. 122.  
Crompt. 195.

EVERY Justice of peace, upon his discretion, may binde to the good behaviour, him that is charged, or suspected to have begotten a Bastard child; to the end that he may be forth coming when the child shall be borne; otherwise there will be no *Putative* father, when the two Justices (after the birth of the child) shall come to take order according to the Statute of 18. *El. c. 3.* The like may be done after the birth of the child, and before such order taken.

Also if the *Putative* father of any such child, either before the birth of the child or after, shall by any perswasion, procurement, or other practice, be conveyed or sent away, or shall run away, so as the Justices of peace cannot come by him, or so as the order of the Justices by means thereof shall not be performed; it seemeth every Justice of peace, upon his discretion, may binde to the good behaviour, and so over to the next generall Gaole delivery (before the Judges of Assise) or to the next quar-

quarter Sessions, such as shall have any hand in such practices, &c. So of such as by practice, &c. shall cause the mother of the child to be constrained or sent away, or to run away, whereby shee leaveth her child to the charge of the Towne, &c. *vide hic cap. 108.*

Two Justices of peace (one being of the *Quorum*) in or next to the limits where the Parish Church is, in which Parish any Bastard child (begotten and borne out of lawfull matrimony) shall be borne, upon examination of the cause and circumstances, shall and may take order by their discretion, as well for the releefe of the Parish (in part or in all) and keeping of the child, (by charging the mother or reputed father, with the payment of money (wholly, or other releefe) as also for the punishment of the mother and reputed father, *an. 146. cap. 28. & 3. Carol. 4.*

Two Justices.  
18 Eliz. c. 3.  
p. 2.

But such a Bastard child must bee one that is left to bee kept at the charge of the Parish; or one likely to be (or which may bee) chargeable to the Parish. See the Stat. of 18. Eliz. and the Stat. 7. 146. cap. 4.

The (reputed) father by the Law of God was to give unto the maides father: 50. *Shekels of silver*; and he also was to take her to his wife. *Exod. 22. 16. and Deut. 22. 28. 29.* wherewith agreeth the *Canon. 47. Apostol. Quam quis violenter virginem, ducat in uxorem.*

If the two Justices cannot agree upon their order, what is then to be done, see *hic infra cap. 6.* But by some opinions, the words of this Statute being (disjunctive) two Justices of Peace, or next to the limits &c. If the two Justices of peace in that division or limits cannot agree, then the two Justice of peace next to that division or limits, (being within the same County, and one of them of the *Quorum*) have power to take order therein. *quare inde.*

Also it seemeth the mother may be examined upon oath concerning the reputed father, and of the time, and other circumstances; for that in this case the matter and the tryall thereof dependeth chiefly upon the examination and testimony of the mother. *vide hic cap. 66. & Lamb. 517.*

7. 146. 51.

113

By the Statute 7. 146. it appeareth that the Justices of the peace shall now commit such lewd women to the house of correction there to be punished, &c. And therefore it seemeth that the Justices of peace may not punish (by corporall punishment) the mother by force of this Statute of 18. Eliz. 3. and then to send them to the house of correction, for the rule of Law is, *Nemo debet bis puniri pro uno delicto*; and the Divines say, *Deum non agit bis in idipsum*, Co. 4. 43. & 8. 118.

But such corporall punishment, or commitment to the house of correction, is not to be untill after that the woman is delivered of her child;

child, neither are the Justices of peace to meddle with the woman untill that the child be borne (and shee strong againe) lest the woman being weake, or the child wherewith she is, happen to miscarrie: for you shall finde that about 31. *Eliz.* a woman great with child, and suspected for incontinencie, was commanded (by the Masters of Bridewell in London) to be whipped there, by reason wherof she travelled, and was delivered of her child before her time, &c. And for this the said Masters of Bridewell were in the Starre-Chamber fined to the Queene at a great summe, and were further ordered to pay a summe of money to the said woman.

18. *Eliz.* 3.  
P. 1.

After such order by two such Justices, subscribed under their hands, if the said mother, or reputed father, upon notice thereof shall not performe the said order, then such person so making default, shall be committed to the Gaole, there to remaine without baile or mainprise, except such parties shall put in sufficient sureties to performe the same order, or else personally to appeare at the next generall Sessions of the peace, in that Countie, and to abide such order as the Justices of P. or the more part of them, then and there shall take in that behalfe, (if they shall take any) or in default thereof, then to abide and performe the order before made.

*Nota que Enfant nee per xi. dies post ultimum tempus legitimum mulieribus constitutum, (sc. post 40. Semaines, apres mort son pere,) ne sera adjudge legitimum puerum, &c. Co. L. 123. 2 Esdras 4. 40. 41. Et issint semble de Enfant, nee apres 40. Semaines del temps que feme charger homo daver Carnall Comsance de luy, tiel Enfant ne sera adjudge ne repute de stre le issue de tiel home.*

7. *Iac.* 4.

Every lewd woman which shal have a Bastard, which may be chargeable to the Parish, the Justices of peace shall commit such woman unto the house of correction, there to be punished and set on worke for one year: and if she shall eftsoones offend againe; then to be committed to the house of correction, as aforesaid; and there to remaine untill she can put in good sureties for her good behaviour, not to offend so againe.

Now it seemeth that such commitment to the house of correction ought to be by two Justices at the least (by the words of this Statute) and then by the conference of these two Statutes of 18. *Eliz.* and 7. *Iac.*) it seemeth fittest for the two next Justices authorized by 18. *Eliz.*

It seemeth also (by the words of this Statute 7. *Jacobi*) that such a woman shall not be sent to the house of correction, untill after the child be borne, and that it be living; for it must be such a child as may be chargeable to the Parish.

Also it seemeth that such a Bastard Child, is not to be sent with the mother



mother to the house of correction, but rather that the child should remaine in the Towne where it was borne, (or settled with the mother) and there to be releved by the worke of the mother, or by releife from the \* reputed father : See to this purpose the Resolution of the Judges, *\* 18. E. li. 3.* *Resol. 6.* in the title *Rogues* : and yet the common opinion and practice is otherwise, *sc.* to send the child, with the mother, to the house of correction ; And this may also seeme reasonable, where the child sucketh on the mother. *Vide plus. cap. 6. fine. & cap. 40. Resol. 7. & Quare.*

**B**Y the common Law, the Sheriffe, and every Constable, (being conservators of the Peace) might have bayled a suspect of felonie : but this authority seemeth to be taken from them, and given to the Justices of Peace by the Statutes following.

First, by the Statute *1. R. 3. cap. 3.* every Justice of Peace had authority (by his discretion) to let to bayle persons imprisoned for suspicion of felonie, &c.

But for as much as after the making of that Statute, divers not being bayleable, were notwithstanding let to bale, and so, many notable felons escaped, therefore this Statute was repealed by the Statute of *3. H. 7. ca. 3.* *Fitz N. B.* *352. f.* And thereby any two Justices of Peace, (the one being of the *Quorum*) were enabled to let any prisoners (mainpernable by the Law) to bayle, to the next generall Sessions of the Peace, or Gaole delivery, as the case should require. After, for that one Justice of Peace in the name of himselfe, & of one other of his fellow Justices (not making the other Justice privie unto the cause, wherefore the prisoner should be bayled) did oftentimes by sinister meanes set at large great and notable offenders, such as were not bayleable, and yet to hide their affection therein, did signifie the cause of their apprehension, to be but onely for suspicion of felony, whereby the said offenders have escaped unpunished ; for reformation whereof, by the Statute *1 & 2. P. & M.* it was enacted, That *1. & 2. P. & M. cap. 3.* *P. Inst. 107.* if it be for manslaughter, or felony, or suspicion of manslaughter or felony, then the same Justices must bee present together, at the time of the said bailement ; and that they must certifie (in writing subscribed with their owne hands) the said bailement at the next generall Gaole delivery, to be holden within the County where the person shall be arrested or suspected, upon paine to bee fined by the Justices of Gaole delivery.

One Justice

Now by the Preamble of both last recited Statutes, the mischief seemeth to be the escape of felons; and therefore if it be not in case of felony, it seemeth any one Justice of Peace alone, may bayle a prisoner; (see the titles, *Affray*, *Dying*, and *Sumery for the Peace*;) except where some particular Statute shall otherwise prescribe, as in *titulo Counterfeiners*. See more of Baylement, *hic postea*, cap. 114.

Bridges.

CAP. 13.

Foure Just.

22 H 8 5.

P. 2, 7.

**V**Here a decayed Bridge is, and that it cannot be proved who, nor what lands be chargeable to the repairing thereof, foure Justices of Peace (whereof one to be of the *Quorum*) within the Shire or Riding wherein such decayed Bridge been (out of Cities and Townes corporate; and if it be within a City or Town corporate, then foure such Justices of Peace there) may within the limits of their severall Commissions, call before them the Constables, or two of the most honest inhabitants of every Towne and Parish within the shire, Riding, Citie, or Towne corporate, wherein such Bridge, or any parcell thereof shall happen to be; and the said Justices (upon the appearance of such Constables, or other Inhabitants, and with their assents) may tax every inhabitant in any such City, Towne, or Parish (within their limits) to such reasonable summe of money, as by their discretions they shall thinke convenient, as well for the repairing of such Bridge, as also for the making and repairing of any High-ways, lying next adjoyning to the end of any such Bridge within this Realme, distant from either of the ends of the Bridge by the space of three hundred foot.

P. 2.

After such taxation made, the said Justices of Peace shall cause the names and summes of every particular person, so by them taxed, so be written in Roll indented.

P. 3.

Also the said Justices shall make two Collectors of every Hundred, for the collecting of all such summes of money, by the said Justices set and taxed; which Collectors receiving the one part of the said Roll indented under the scales of the said Justices, shall have power thereby to collect all the particular summes of money therein contained; and to distraine such as shall refuse to pay the same, and to sell such distresse, delivering to the owner the overplus of the money, if there be any.

P. 4.

Also the said Justices shall appoint two Surveyors, which shall see such decayed Bridges, and wayes, repaired and amended from time to time, as often as need shall require; to whose hands the said Collectors

lectors shall pay the said summes of money by them received.

The said Collectors and Surveyors, and their executors and administrators, and every of them shall from time to time make a true account to the said Justices of Peace, of the receipts, payments, and expences of the said summes of money: And if any of them refuse so to doe, then the said Justices of Peace from time to time (by their discretions) may make out Processe against the said Collectors and Surveyors, their executors and administrators by attachments, precept or warrant, under their seals, retournable at their generall Sessions of the Peace. *Ibid.*

Also the said foure Justices of Peace may allow such reasonable costs and charges to the said Surveyors and Collectors, as by their discretions they shall thinke convenient. *Ibid.*

If any such Bridge shall lie wholly in a City or other corporate Town, P. 1. the Inhabitants of the Shire or Riding, shall not be charged therewith, but such Bridge shall be made and repaired by the Inhabitants of such Citie or Towne corporate.

If any such Bridge be without Citie or Towne corporate, the same shall be made and repaired by the Inhabitants of the Shire or Riding within which the same Bridge shall be, *Ibid.*

If part of any such Bridge be in one Shire, Riding, Citie, or corporate Towne, and part in another, then every of them shall be charged to make and repaire such part as shall lye and be within their limits, *Ibid.*

But otherwise no Village or Freeman shall be compelled to make any Bridge, but such as of old time, and by right they had wone to make, and that they and their Ancestors have used time out of minde, to make the same; or that they hold certaine lands to make the same: for though a man of his owne accord, hath made or amended a Bridge, yet shall hee not be thereto constrained at another time, and yet if a man and his Ancestors, or a Corporation, &c. have time out of minde used to doe such things, although they did it of their owne free minde and accord, and not of right, nor have any land, by reason whereof they may be tied, yet such continuance shall conclude them and their heires, or successors: And so of High wayes, 21. Ed. 4. 46. *Mag. Chart. 15. P. tit. 1. weares 1. P. Grants 4. E. 3. 31. 21. E. 4. 46.*

Where a man and his Ancestors or Predecessors have used time out of minde to repaire a Bridge, the King cannot acquite or discharge them thereof, *Fitz. Gr. 94.*

Where it is presented that I. S. *ratione remane. juv.* hath used to repaire such a Bridge, this implyeth a Prescription, 21. E. 4. 38. *Crempt. 186.*

But a Presentment that I. S. and his Ancestors have used to repaire  
H such



such a Bridge, this is no good prescription to charge the heire (by the act of his Ancestor) without some profit to be taken therefor; 27. Aff. 8.

*Cromp. 187.* See the next case but one. Otherwise it is of a corporation spirituall, or temporall, they by reason of usage time out of minde, &c. may be charged at this day to reparaire a Bridge, although they have no land by reason whereof to be charged, for that such a body never dieth. *Ibid.*

Also, where a man hath once repaired a Bridge, and that afterwards the same was not repaired within the memory of man, by some opinions, he or they, which have his estate in land, shall be bound to reparaire the Bridge; for that it shall be supposed to have been done at the first, by reason or cause of his Tenancie, except some other particular cause of the doing thereof, shall be proved. But where the cause shall appeare, there *Cessante causa, cessabit effectus.*

P. Bridges 1.

He that hath his land adjoyning to such Bridge, is not chargeable to make or reparaire the Bridge, except where they have made it by Prescription, 8. H. 7. fol. 5. b.

*Cromp.*

186. b.

& 187. b.

\* 37. Aff. pl.

10. per

Greene.

By common right Bridges shall be amended by the whole Countie, for that it is for their common good and ease; and yet if any have fishings, or other profit in that river, they in reason and law (as it seemeth) are chargeable, and therefore the Justice of peace in good discretion may tax such, proportionably to their profit.

Where men are charged by their tenure or lands, every owner or occupier of such lands are to be charged proportionably to their said lands.

*Vide tit. Sewers, & Fitz. 235. b.*

Co. 11. 32.

Such as are chargeable to reparaire a Bridge, may enter upon any other mans lands or soile adjoyning, and may lay their stone, lime, timber, or other things necessary for the repairing and amending thereof, and the owners of the lands shall have no action therefore, for it is for the common profit, &c. 43. Aff. 37. Fitz. Affise 353.

Yea, where one is chargeable to reparaire a Bridge, he must also maintaine the way at each end thereof, (though the soile be to another,) and if the ends be broken by the water-courfe, hee must follow the water-courfe, and reparaire the way, &c. *Cromp. 186. b.*

*Cromp. 187.*

If a man maketh a Bridge for easement to his Mill, and that decayeth, the party, nor any other shall be charged to reparaire this, for it is no common passage, *Fitz. Barr. 276.*

Clot.

**E**very Justice of Peace may enter in and upon any houses, lands, or grounds, and make search for any teynters, wrinches, or other engines whatsoever, whereby any deceit may be used in or about the stretching of any woollen cloth; and may utterly deface the same teynters, &c. and for the second offence may sell them away to the best value thereof. But the disposing of such money shall be by two Justices. See *hic postea*. One Just.  
39 Eliz. 10.  
43 Eliz. 10.  
P. Drapery.  
118, 117.

And if upon any information made to any Justice of peace, of any such teynters, &c. hee shall not make search and execute this law within seven dayes, he shall forfeit for every such default, five pound.

Also one or two of the Justices of peace of the Shire next adjoining to any City, Borough, or Towne corporate within England, may joyn with them of such City, Borough, or Towne corporate, in appointing the yearly Overseers for such cloths, &c. *ibidem*. P. Drapery  
115 117.

Any two Justices of peace, within their limits, may once every yeare appoint Overseers or Searchers (for that whole yeare following, or for a shorter time, at their discretions) of any woollen cloth, to bee made or sold in any Town not being corporate, and may charge them upon their oathes, and binde them in Recognizance of forty pounds a peece, to doe their best indeyours by all lawfull wayes and meanes, for their time, to see the statute of 3. E. 6. cap. 2. and of 39. Eliz. cap. 20. in all points truly observed, and kept within their limits (sc. within the Towne or Parish where the said Overseers shall be dwelling) the particulars seeme to be these: Two Justices.  
3 E. 6. 2.  
39 Eliz. 10.  
43 Eliz. 10.  
P. Drapery,  
45 115, 118

1 That the weights, lengths, and breadths of all woollen cloathes, bee according to the Statutes, 39. Eliz. See the Statute 4. Jac. cap. 2. & 21. Jac. cap. 18.

2 That every such cloth have a seal of lead containing the just length and weight, 39. Eliz.

3 That such cloth be not stretched or strained, 39. Eliz.

4 Where there be any Teynters, Wrinches, or other such engine, for the stretching of cloth, 34. Eliz.

5 That no iron cards or pickards be occupied in any woollen clothes, 3. Ed. 6. cap. 2.

6 That clothes or woolls be not falsely dyed or coloured, 3. E. 6.

7 That no haire, flocks, thrums, yarne made of lambs wooll, chaffe, flower, or starch, or other deceiveable thing, bee put in or upon any woollen cloth. 3. See Ed. 6. & 43. Eliz. cap. 10. & 4. Jac. cap. 2. & 21. Jac. Regis. cap. 18.

8 That no clothes be in any deceiveable manner pressed, to be put to sale, 3. *Ed. 6.* See also the Statute of 5. *Ed. 6. ca. 6. & 21. Jac. cap. 18.*

Any two (or more) Justices of Peace within the County, Citie, Borough, or Towne Corporate Where deceiveable cloth shall bee made, or suspected to be made (upon complaint or information of any Overseer, Searcher, or any other, of any such offence) may grant their Warrant to call before them any person or persons, that in their discretion shall be thought fit to discover any such offence, And may examine upon oath any such persons for the triall and better finding out of the said offence. And if upon such examination it shall be found by testimony of two witnesses (or more,) or by the confession of the offender, that any such offence hath beene committed, the same shall be a sufficient conviction of the offence; and then the said Justices shall or may certifie such offence unto the Church-wardens, and overseers (for the time being) of the poore of the Parish, where such deceiveable cloth shall bee made, under the hands and scales of the said Justices: And upon such certificate, and a warrant made By the said Justices, to the said Overseers, and Church-wardens for the levying of the forfeiture, The said Overseers, and Church-wardens, or any of them, or their or any of their successors, immediately from and after such certificate and warrant delivered to them or any of them, may levie the summe or summes of money, which by the said certificate and warrant shall appeare to be forfeited by way of distresse and sale of the offenders goods, rendring to the offender the overplus, &c. And in defect of such distresse, the said two Justices may commit the offender to the common Gaole, there to remaine without baile, untill payment shall be made of the summes so forfeited to the said Overseers, and Church-wardens, or some or one of them, &c.  
21. *Jac. 18.*

The Overseers duty.

These Overseers, or two of them, shall (or may) from time to time, or once every moneth at least, goe into all or any houses, shops, or other roomes of any Clothier, Draper, Cloth-worker, or other person where such cloth shall be, or shall be suspected to be, and there to make due search and triall &c. Stat. 39. *Eliz. cap. 20. & 21. Jac. Regis cap. 18.*

39. *Eliz.*

Also the same Overseer shall fix unto every Cloth (by them viewed) a scale of Lead, containing the length and the weight of every such cloth, together with this word, Searched, or Faulty, if there be cause.  
21. *Jac. 18.*

And every Overseer of cloth, appointed by any former law, (now in force) to fix unto any kinde of cloth a scale of Lead, shall ingrave or set upon every their scales of Lead (which they shall fix unto any cloth by



by them to be sealed) his Christen and Sirname : And no cloth to be sealed with any seale of Lead which shall want such ingraving or print, shall be allowed to be sufficiently sealed, 21. *Iac. Regis cap. 18.*

Also the said Overseers shall seize and carrie away as forfeit, all such cloth, as upon their search they shall finde not to be sealed with a seale containing the just length and weight : and shall present the same cloth to the Justices of peace at the next quarter Sessions of the Peace. 39. *Eliz. 20.*

And if the said Overseers shall finde any false seale set upon any cloth ; or any cloth to be stretched, or strained, they shall present such defaults, at the said next Sessions, together, with the names of the owners of such cloths. *Ibidem.*

But cloth once lawfully searched, viewed, weighed, and sealed by the Overseers and Searchers of the parish, towne, or place, where the said clothes bee made, shall not afterwards bee viewed, searched, or weighed, by any other person or officer whatsoever. 4. *Iac. cap. 21. Iac. cap. 18.*

And if the said Overseers shall finde any such Teynters, Wrinches or Engines (for the stretching of cloth) they shall deface the same ; And for the second offence therein, they shall take away the said Teinters, &c. and shall sell the same to the best value thereof. And by the consent of two Justices of Peace shall dispose the money thereof, to the poore of that parish. *vide 21. Iac. cap. 18.*

If any person commanded by two Justices of peace to appeare to bee made an Overseer according to this statute, doe (without reasonable excuse) refuse to come, and to take upon him that office, he shall forfeit for every such refusall five pounds, the one halfe to the King, and the other halfe to those two Justices ; and shall remaine in ward to the Sheriffe, untill hee hath paid the same forfeiture, or put in sureties for the same, 39. *Eliz. cap. 20.*

The money that shall be made, upon the sale of any teinters, wrinches, and other such engines, shall be disposed (to the poore of the Parish, where the said teinters, &c. shall be found) by the consent of any two Justices of peace, within the same County. *P. Drapp. 113.*

But by the Statute 7. *Iacobi*, certaine cloths made within the County of Cumberland, Westmerland, and Lancaster, shall not be subject to search, &c. Also by the statute 3. *Iac. cap. 1. 7. Welch Cottons* shall not be searched, nor tried : Neither need they to have any seale containing their length, or weight.

All penalties and forfeitures for want of length, breadth, and weight  
H 3

of cloth, limited by any statute now in force, shall be distribute into three parts equally; whereof one third part shall be unto the Searchers, finding and certifying, the same, &c. And the other two parts shall bee unto the poore of the Parish where the said cloth shall be made. The said two parts to be levied by way of distresse, and sale of the offenders goods, &c. upon a warrant from two Justices of peace, &c. 21. Jac. ca. 18.

5. Ed. 6 6.

P. Just 83.

If any person (which shall retails any of the Clothes, Kerfies, Frizes, Rugs, or Cottons, of the severall makings specified in the statute 5. Ed. 6. cap. 6.) doe present any such woollen cloth which is defective or faultie, unto two Justices of peace, next adjoyning (out of a Citie, Borough, or Towne corporate) where such shall bee found faultie, the same Justices shall cause the same cloth to bee cut into three equall peeces, whereof the King shall have one, the presenter another, & the third the said Justices shall retaine to themselves.

7. Jac. 7.

Any two Justices of peace may take order between the Clothier and his Spinsters, Carders, Kembers, Sorters, and Weavers, which shall unjustly, or deceitfully convey away, imbesill, sell, or detaine any part of the wool or yarne delivered to them: and that as well everie such Spinster, &c. so offending, as also the buyers & receivers (knowing the same to be imbesilled) being thereof convicted, by the confession of the partie, or by one sufficient witness upon oath, before two such Justices shall give such recompence to the partie grieved, for such their losse and damage, as by the said Justices shall be ordered; & if such offender shall not be thought (in the discretion of the said Justices) able, or doe not make recompence according to such order, then such offender is to be whipped, or set in the Stocks (in or neere the place where the offence was committed) at the discretion of the said Justices. And such two Justices have full power to minister the oath to such witnesses, and finally to hear, end, and determine the said offences.

7. Jac. 6.

P. Just 66.

Clothiers and other Masters, that shall refuse to pay such wages (to their Spinsters, Weavers, or other work-men whatsoever) as shall bee assessed at the Sessions, by the Justices of peace, and shall be thereof convicted before any two Justices of the peace, (one being of the *Quorum*) upon their owne confession, or upon prooffe by two sufficient witnesses, shall forfeit for every such offence, x. s. to the partie grieved, the same to be levied by distresse and sale of the offenders goods, by warrant from the same Justices.

Linnen  
cloth.

1. Eliz. 12.

R. Just 19.

Two Justices of the peace (one being of the *Quorum*) may take the information of stretching, or other deceitfull using of Linnen cloth, (by him that hath seised it) and of his seiser thereof; may binde the said seiser

feiser to give in evidence, and to pursue the same matter with effect, (at the next Sessions, &c.) and also to pay the moitie of all that he shall recover, to the use of the Kings Majestie, &c.

## Corne. CAP. 15.

**T**He certificate of one Justice of Peace (joyned with the Customer of the place) of the unlading and selling of Corne or Castell, carried by water from one place to another of this Realme, unto the Customer and Controller of the place where the same was imbarqued, is sufficient upon the flat of fore-stalling. See more of corne, *titulo Transportation.*

## Constables. CAP. 18.

**C**onstable, this word is derived or deduced of two old Saxon words, Cuning, or Kining, which signifieth King, and stable: stability; shewing that these ancient Officers were reputed to be as the stability or stay of the King, and Kingdom. *Lamb. 5. Dodd. 73.*

Every Justice of peace may cause two Constables to be chosen in each Hundred, *Lambert. 101.* and this seemeth to be meant of the high Constables of Hundreds, and to include and imply of congruence the swearing of them; and seemeth to bee by vertue and force of the Statute of Winchester made 3. Ed. 1. and of the Commission, the first *Assignavit*, or clause.

And by the Statute of 34. H. 8. cap. 26. two Justices of peace, the one being of the *Quorum*, may appoint the High Constables in Wales.

And yet the usuall manner, is, that these High Constables of Hundreds be chosen either at the quarter Sessions of the peace; or if out of the Sessions; then by the greater number of the Justices of peace of that Division where they dwell: and likewise that they bee sworn either at the Sessions, or by warrant from the Sessions; which course hath also bene often allowed and commended unto us by the Judges of Assise.

Also in such manner as they are to be chosen, in the same manner, and by the like authoritie are they to be removed; for, *eadem modo quo quid constituitur, dissolvitur*; so as if there shall bee cause to remove and put an high Constable from his place, it hath not been thought fit that any one or two Justices of peace should doe upon their discretion, but that it should be done by the greater part of the Justices of that Division; and that for some just cause; or else that it be done at and in the generall Sessions of the peace: and so was the direction of Sir John Doddridge at Summer Assises at Cambridge. *Ann. Dom. 1620.*

By the opinion of Master *Lambert* and others, these Constables of Hundreds were first ordained to bee chosen by the said Statute of Winchester.



Winchester *tempore Ed. 1.* And they were to make view of armour twice every yeare, and to present before Justices assigned, defaults of armour, of watches, of high wayes, and of Huey and Cry, and also all such as lodged strangers, for whom they would not answer. See *Rastal. 379. c. d. Lamb. duty of Const. 5. Minsh. verbo Const.*

See Stat. 4.  
E. 3. cap 3.  
c. 10.

Petty Constables (in Townes and Parishes) were after devised (for the aid of the Constables of the Hundred) viz. about the beginning of the raigne of King *Ed. 3.* as it appeareth by *M. Lambert* in his Booke of the Duties of Constables, pag. 9.

But it appeareth by *Finex. 12. H. 7. fol. 18. a.* that whereas the Sherifffes of the Counties, at the first had the government of their Counties, committed to them, that afterwards by reason of the multitude of people, and for that it was too great a thing for one person, (*sc.* the Sherifff) to undertake, therefore Hundreds were deduced and derived out of the Counties, and in every Hundred there was ordained a Conservator of the peace, who was called the (High) Constable; and after, Burroughs or Townes were made, and within every of them also were ordained a Conservator of the peace, who is called the petty Constable (and in some places the Burrough-head) and this was long before the times that Master *Lambert* speaketh of, *sc.* long before King *Ed. 1.* or King *Edm. 3.* which also may appeare by the derivation of the word Constable, *hic supra*, and that they were in the time of the Saxons, so that it may seeme, that as well the high Constables, as the petty Constables, and their authorities, were by the Common Law; and that the old Statutes concerning them, are but a recitall of the antient Common Lawes.

One Justice.

The chusing and swearing of these pettie Constables, is reputed properly to belong to the Court Leet: yet wee finde it usuall and warranted by common experience, that every Justice of peace doth also swear them, and upon just cause doth and may also remove them. See the title

*Warrant. cap. 121.*

Stat. 5, 6.

But in ancient time, both the High Constables of Hundreds, as also the pettie Constables of every Towne were yearely appointed by the Sherifff in his Torne, and were there sworne, or received their oath: And they may still be chosen or appointed, and sworne in the Sherifffes Torne, as well as in the Leet.

Constables lawfully chosen; if they shall refuse to be sworne, the Justice of P. may bind them over to the Assises, or Sessions, of the Peace.

co. 8. 41.

And here for the better chusing of these Constables, you shall understand, that the Law requireth that every Constable bee *Idoneum homo*, that is, apt and fit for the execution of the said office. And he is said in Law

Law to be *idoneus*, who hath these three things, Honesty, Knowledge, and Abilitie.

Honestie, to execute his office truly, without malice, affection, or partialitie.

Knowledge, to understand what he ought to doe.

Abilitie, as well in substance or estate, as in bodie, that so hee may intend and execute his office diligently, and not through impotencie of body, or want, to neglect the place.

For, Constables chosen out of the meaner sort, They are either ignorant what to doe; or dare not doe that they should; or are not able to spare the time to execute this office. They are therefore to bee able men; And are not to be chosen, either by the house, or other custome.

And if any shall be chosen Constable, which is not thus inabled and qualified, he may by Law be discharged of his said office, and another fit man appointed in his place.

Leetes choosing unable, or unfit petty Constables is cause of forfeiture of the Leete; And such choise is voide. And two Justices of peace may remove such a Constable. Or rather the Lord of the Leet would be dealt withall to choose fitter Constables; and upoti this default, complaint is to be made at the Assises, or Sessions of the peace: from thence a warrant to be granted to the Justices of peace to choose and swear others more fit. And so was the direction of the Judge of Assise at *Cambridge Anno 8. Caroli Regis.*

For the Duties of a Constable, see their Oath *hic. cap. 121.*

### Counterfeits. CAP. 17.

**T**WO Justices of peace, the one being of the *Quorum*, may convent *Two Justices* by Proesse, or by their Warrant (*sc.* may grant their warrant to attach and binde over) to the next generall Sessions of the peace, or Assises, any person that is suspected of any deceitfull getting into his hands, any money, goods, or other things of any other persons, by meanes, or colour of any false tokens; or counterfeit letter made in any other mans name; there to bee examined and ordered. Also it foemeth, the said Justices may call or convent before themselves the offenders, and after due examination, &c. may imprison such offenders, or bayle them until the next generall Sessions, or Gaole delivery. In this case, the said Justices of peace shall doe well to take examination of the offence, and to certifie the same to the said Sessions, or Gaole delivery; and withall to binde over the Informers and Witnesses, to give evidence therein.

Also it seemeth that any one Justice of peace may bind such offenders (as Cheators) to their good behaviour, and so to the next Assises, or Sessions of the peace: or else (by force of the Statute, 7. Jac. cap. 4.) may send such offenders (as idle and disorderly persons) to the house of correction, there to be continued untill the next Assises, or Sessions and then and there to be forth-comming, &c. Yet *quere* of sending them to the house of Correction: and it seemeth more warrantable, if they be sent to the house of Correction, by order of the Sessions.

## Dying. CAP. 18.

One Justice  
39. El. 11.  
P. 2.

**V**Pon information given to any Justice of peace against any person suspected to offend this Statute concerning the using of Logwood, *alias* Blockwood, in dying, such Justice may by his Warrant, or other commandement, cause to come before him, and may examine by oath, or otherwise, the servants or workmen of such suspected offenders, and other persons able to disclose the offence: And upon finding the same (so that any person hath used, or caused to be used, in the dying or colouring of any cloth, wooll, yarne, grogeraine, buffins, or silke, or any thing made of woollen, yarne, or silke, any Logwood) the said Justice shall binde with sureties (to the next Gaole delivery, or quarter Sessions of that County) as well such suspected offenders, there to make answer for their said offence, as the examiners, which doe discover the offence; and shall also certifie thither the said examinations: And if such suspected offender shall refuse to be bound, then may such Justice send such suspect to the next Gaole, there to remaine, till he or she shall become so bound with sureties.

Two Justices.  
13 El. 9.  
P. 1.

Any two Justices of the Peace of the Countie where any Logwood shall be found (in whose hands soever it shall be) may cause the same to be burned.

## Egyptian. CAP. 19.

One Justice  
21. H. 8. 10.  
Rastal. 135.

**E**Very Justice of peace, Sheriffe, and Escheator, may seise all the goods of any Outlandish persons, calling themselves Egyptians, that shall come into this Realme, within one moneth after their arrivall, and may also keepe the one moitie thereof to his owne use, making account to the King in the Exchequer for the other moitie. And every person that can prove by two credible witnesses (before the said Justice or other officer, that so seiseth the said goods) that any of those goods were craftily



tily or feloniously taken from him, shall incontinently be restored there-to (by the partie that so seizeth them) upon paine of the double value thereof to be forfeited by such seiser to such prover.

But note, that after the moneth, the offence is made felonie, by the Statute of 1. & 2. Ph. & Mar. cap. 4. & 5. Eliz. cap. 20. P. 2. And then it seemeth the King is to have the goods wholly: And *quare* whether the Statute of 22. H. 8. be still in force, or be altered by the said Statute of 1. & 2. Ph. & Ma. cap. 4. & 5. Eliz. cap. 20. 5. El. 20.

## Felonie. C A P. 20.

**E**VERY Justice of Peace (by force of the Commission, the first *Assignamus*) may cause fresh suit, Hue and Cry, and search to be made, by the Sheriffe, Bailiffs, Constables, and others, upon any robberie or theft: and also may cause the Constables to arrest, and to imprison all such as shall be suspected to be thieves, murderers, or felons. *Lamb. 190.*

Also, every Justice of Peace may and must take the examination of all such felons, or persons suspected for felonie, as shall be brought before him. See *hic* cap. 3. 1. & 3. Ph. & Ma. 10.

2 And must take information against them (of those that bring them) of the fact and circumstances of the felonie and fact.

3 And must put in writing such examinations and informations, or so much thereof as shall be materiall to prove the felonie; and must certifie the same to the next generall Gaole deliverie.

4 And after such examination, and information taken, then the Justice must commit such Felons to the Gaole, or may baile them, if they be baileable; but then there must be two Justices together, and the one of them, of the *Quorum*. See *postea* tit. *Bailement*. Cap. 14. 1. & 2. Ph. Mar. 13.

5 And must binde over (by Recognizance) the informers (that doe declare any thing materiall to prove the felonie) to appeare, and to give evidence against the Felon, at the next generall Gaole deliverie, to bee holden within the Countie, Citie, or Towne corporate, where the triall of the said felonie shall be.

If such informer be unable to travell, &c. then the Justice of Peace may take his information upon oath, and may certifie the same *ut supra*, &c. and may forbear to binde such informer to appeare personally before the Justices at the Gaole deliverie, &c.

If the Justice of Peace shall not certifie such examinations and informations to the next generall Gaole deliverie; or if the Justices of Peace shall not certifie their bailement; or shall not binde over the informers

to appeare, and to give evidence against the Felon, at the next generall Gaole delivery, as aforesaid; The said Justice of Peace shall be fined (for every such default or offence) at the discretion of the Justices of Gaole delivery. 1. & 2. & 3. Ph. & Ma.

But yet if it be for petty Larcenie, or other small felonies, the Justice of Peace may binde over the informers, and may certifie the examinations, and informations, to the next quarter Sessions of the Peace; and this was the advice and direction of Sir David Williams, Knight (late one of the Justices of the Kings Bench) at the Assises at Cambridge; For, said he, it was not meet to keepe poore prisoners in the Gaole for small matters of felonies, from one Assises till another, and therefore he gave order, that the Justices of Peace (at their generall Sessions of the Peace) should trie and deliver offenders for small felonies.

P. Just. 1. 18. Besides, the Justices of Peace of every Countie, as well by vertue of  
Stamf. 58. their Commission, as also by force of the Statutes of 18. Ed. 3. 2. 34. Ed. 3.  
Li. Int. 3. 85 1. & 17. R. 2. 10. have authoritie to proceed to the delivery of Felons, and  
Co. 9. 118. to beare and determine, and to give judgement upon all felonies, where-  
of any person shall be indited before them; and are not restrained by the  
Statutes Ph. & Ma. but that they may proceed therein before the com-  
ming of the Justices of Assise and Gaole delivery. The words of the  
Commission to that purpose are, *Assignavimus vos Justitios nostros ad  
pacem, &c. Ad etiam ad inquirend. de omnibus & omnimodis felonis, &c.  
Et ad omnia & singula felonias, &c. audiendum & terminandum, & ad do-  
linquentes castigandum et puniendum.* Vi. Plo. 485. b.

And for that purpose also the aforesaid statutes of 18. E. 3. 34. Ed. 3.  
& 17. R. 2 have ordained, that some learned in the Lawes shall be put in-  
to the Commission of the Peace, in every Countie within this Realme.

Also there bee divers Statutes, which by speciall words did ordaine,  
that the Justices of Peace should have authoritie at their generall quar-  
ter Sessions to inquire of, beare, and determine certaine felonies; as the  
Statutes:

- D. Just. 14. 18. H. 6. 19. & 3. H. 8. 5. Souldiers departing without licence.  
E. Sher. 13. 1. Ed. 4. 2. Felonies presented before Sheriffes in their Turnes, or  
Law-dayes.  
P. Just. 11. 22. H. 8. 11. Cutting downe of Powdicke.  
P. Just. 13. 25. H. 8. 6. Against Buggerie.  
P. Just. 15. 8. El. 3. Transporting of sheepe.  
P. Just. 74. 39. El. 4. & 1. Jac. 7. Incurrible Rogues.  
P. Mariners. 39. El. 17. Wandring Souldiers and Mariners.  
6. 43. El. 13. Carrying men forcibly out of Cumberland, &c.  
P. Robberie.

So that the Justices of Peace, at their Sessions, may safely proceed to trie all petty Larcenies, and small Felonies, and such other Felonies whereto they are authorized by these last recited statutes: And in such cases also, the Justices of Peace that shall take the examination of such felonies, may safely binde over the informers, and certifie the examinations and informations, to their next generall Sessions of the Peace.

In cases of murder, or other homicide, the offenders (by the Statute of Glouc. made 6. E. 1. cap. 9.) are to abide in prison untill the Justices of Gaole deliverie shall come into the Countrey to deliver the Gaole: And by the Statute of 4. E. 3. two Wardens or the keepers of the peace, or Justices of Peace might take indictments, &c. but the persons so indited were to be delivered by the Justices of Gaole deliverie.

But after by the Statute of 18. E. 3. cap. 2. before mentioned, Justices of Peace were assigned to heare and determine felonies, &c. and to inflict punishment according to Law, and the manner of the deede. And by the Statute of 34. E. 3. cap. 1. Justices of peace had power given them to heare and determine at the Kings suit, all manner of felonies done in the same Countie according to Law, &c. And by the Statute of 17. R. 2. cap. 10. in every Commission of the peace, two men of Law (amongst others) are to this purpose to be assigned, *sc.* to goe and proceed to the deliverance of Felons, as often as they shall thinke it expedient.

And yet there be some felonies, which the Justices of Peace cannot heare or try at all, neither can they inquire thereof, nor otherwise deale therewith; (as it seemeth) as namely:

1 First, if any man being the Kings sworn servant (and his name in the Chequer-roll of his household) under the degree of a Lord, shall conspire with another to destroy the Kings Majestie, or any Lord of this Realme, or any other sworne to the Kings Councell, or the Steward, Treasurer, or Comptroller of the Kings house: every of these offences are made felonie by the Statute made 3. H. 7. But such offences are by the same Statute appointed to be tried by a Jury of the Check-roll of the same household, and before the Steward, Treasurer, or Controller of the Kings said house.

\* This is  
High Treason  
See per  
stat 3 H. 7.  
c. 18.

2 All murders, or manslaughter committed or done within any the Kings palaces or houses, or within the limits or bounds thereof, or within any other house where his Majestie shall happen to be then abiding in his royall person, shall be enquired of, tried, heard, and determined before the Lord great Major, or Lord Steward for the time being of the Kings household, and in their absence before the Treasurer and Comptroller of the same household, and the Steward of the Marshalsey, or two of



them, &c. and such triall to be by the inquisition and verdict of his Majesties household servants in the Check-roll. 33. *H.8. cap. 12.*

3 Embeaseling of any Record, Writ, Returne, Panell, Proccesse, or Warrant of Atturney, in the Chancerie, Eschequer, the one Bench or the other, or in the Treasurie, whereby any judgement shal be reveried, every such offence is made felonie in such Imbeasellor, Stealer, or Taker away, and in their procurors, Counsellors, and Abettors, by the Statute of 8. *H.6.* But such offences are by the same Statute appointed to be tried by a Jury of twelve men, whereof the one halfe shall be of the men (*sc.* of the Officers and Attorneys) of the same \* Courts, who shall bee sworne before the Judges of the said Courts, *sc.* of the one Bench, or of the other, to enquire of that offence: and if they shall indite the Embeasellers of such record &c. they shall be arraigned thereupon before the same Judges, as in cases of other felonies.

4 Rasing of any such Record is also felonie, within the said Statute of 8. *H.6.* and to be tried as aforesaid. *Br. Coro. 174.*

5 Forging of any deed or writing sealed, or of any Court Roll, Will, or Acquittance; or to cause or assent to be made any such forged writing; or to publish or shew forth in evidence any such forged writing, knowing the same to be forged; if any person being once lawfully convicted of any of the said offences, shall afterwards commit any the said offences againe, every such second offence is made felonie by the Statute of 5. *Eliz.* But by the same Statute, such offences are to be inquired of, heard and determined, by and before Justices of Oyer and Determiner, and Justices of Assise,

And therefore whereas one *R. Smith* was indicted at the Sessions of the Peace in the County of *Oxford*, upon the said Statute of 5. *Eliz.* for forging of a false deed, it was adjudged by the whole Court in the Kings Bench, *Ann. 30. Eliz.* that the same indictment was not well taken: For although the Justices of peace by their Commission have power (of Oyer and determiner) to heare and determine felonies and Trespasses; &c. And have in their said Commission an expresse clause *ad audiendum & Terminandum*, and so are Justices of Oyer and Terminer, yet it was resolved by the Court, that for as much as there is a Commission of Oyer and Terminer knowne distinctly by that name, and the Commission of the Peace is knowne distinctly by another name, that the said Indictment taken before the Justices of the Peace at their Sessions, was not well taken, and therefore it was quashed.

The reason of this last case and judgement, seemeth to hold in the former cases, and in all other like cases, where any Statute doth specially give

give authoritie to any other distinct Court, or to other Justices or Commissioners (leaving out the Justices of P.) to inquire of heare, and determine, or to try Felons, &c. there the Justices of the P. (at their Sessions) cannot inquire thereof &c.

6 Servants imbeselling, or taking away the goods of their deceased Master, the Executors of the partie deceased may have a Writ directed to the Sheriffe, to make open Proclamation two Market-dayes, that such offenders shall appeare in the Kings Bench at a certaine day: And if such Writ be returned, that Proclamation is thereupon made accordingly, then if the said persons which should appeare by reason of the said Proclamation, doe make default, and do not appeare in the Kings Bench at the day specified in the said Writ, they shall be attainted of Felonie, by the Statute of 33. H. 6. So that such offence of servants imbeselling their said Masters goods, beginneth first to be felonie upon their default of appearance in the Kings Bench, after Proclamation; of which default the Justices of Peace cannot take notice, for that they have not before them the record of such default, or not appearing, and therefore the Justices of P. cannot inquire of such Felonie, &c. *Crompt. 56. Lamb. 529.* 13. H. 6. m.

But in the former cases, if any such offender shall be brought before any Iustice of Peace, and charged with any such Felonie, *quare* how far the Iustice of Peace is to deale, or what he is to doe therein, considering the Iustices of Peace are no Iudges of such Felonies, neither have they any jurisdiction given them by the Statutes in such cases: and yet for that they are by their Commission authorized to deale with all felonies; as also with all Offences against the peace of the King, and Realme, of which sort all these last former offences are, *Quere* if the Iustice of Peace shall not doe well to examine the offence, and then to certifie his examination, to such persons as by the Statute are made Iudges of the causes: And also to commit such an offender to prison, to bind over the informers: And to take their information upon oath.

7 Again, if a man had been feloniously stricken in one Countie, and after died thereof in another Countie, (by the Common Law) no indictment could be thereof taken in either of the said two Counties, for that the Iurors of the Countie where such partie died (of such stroke) could not take knowledge of the said stroke (being in a forreigne Countie:) nor the Iurors of the Countie where the stroke was given, could not take knowledge of the death in another Countie. But now by the Statute of 2. & 3. Ed. 6. an indictment thereof found by Iurors of the Countie where the death shall happen (whether it shall be found before the Coroner, or before Iustices of peace, or other Iustices, &c.) shall be good. 2 & 3. Ed. 6. cap. 24.

good and effectuall in Law: And that the Justices of Gaole deliverie, and Oyer & Terminer in the same Countie, where such indictment shall be taken, shall and may proceed upon the same, as if such stroke and death had beene all in one and the same Countie.

Also where a felon had robbed or stollen goods in one Countie, and after convaied their spoile, or goods so stollen, into another Countie, to their adherents there, who knowing of such felonie, received the same goods; in which case, although the principall were after attainted, the Accessarie notwithstanding escaped, by reason that he was Accessarie in another Countie, and that the Jurors of the said other Countie (by the Common Law) could take no knowledge of the principall felonie, in the first Countie: But now by the said Statute of 2. & 3. Ed. 6. it is enacted, That where any murder or felonie shal be committed and done in one Countie, and other persons shall be accessarie (in any manner, to any such murder or felonie) in any other Countie, That an indictment thereof found or taken against such Accessarie, before the Justices of peace, or other Justices, &c. in the Countie where such offence of Accessarie shall be committed, shall be good and effectuall in Law: and that the Justices of Gaole delivery, or Oyer and Terminer, of or in such Countie where the offence of any such accessarie shall be committed, shall write to the *Custos Rotulorum*, where such principall shall be attainted or convicted, to certifie them whether such principall be attainted, convicted, or otherwise discharged of such felonie; and thereupon the *Custos Rotulorum* shall make certificate in writing under his seale, to the said Justices accordingly; and then the Justices of Gaole deliverie; or Oyer and Terminer, shall proceed upon every such Accessarie, in the Countie where such Accessary became Accessarie, as if both the principall offence and accessarie, had beene committed and done in the said Countie where the offence of accessarie was committed.

So as by the letter of this last recited Statute, the jurisdiction over these last recited felons, and over such accessaries, is not committed to the Justices of peace to proceed to the triall of them: But this authority is remitted to the Justices of Gaole deliverie, or of Oyer and Terminer. Yet the Justices of peace may examine these offences, and take information against the offenders, & certifie the same to the next generall Gaole deliverie, and may binde over the Informers, and commit the offenders: Also the Justices of Peace may inquire thereof, and take indictments against them, as in other cases of felonie.

8 Lastly, the Justices of peace (at their Sessions) cannot make triall of such as be indicted of felonie, before Coroners, or before the Justices of Gaole

Gaole



Gaol delivery, or of *Oyer and Terminer*, unless the same persons (*sc.* the said Coroner, Justices of Gaol delivery, or of *Oyer and Terminer*) were also Justices of Peace in the same County, so as the Indictment may be understood to be taken by them, as before Justices of the Peace. For the Commission of the Peace, & the authority of Justices of the Peace, extendeth onely to try such as stand indicted before themselves; or before former Justices of the Peace; or before the Sheriff in his Tourn, or the Steward in a Leet. See *Lamb.* 486. & *Stat. 1 Ed. 4. cap. 2.* & *Stamf.* 87. for Indictments taken in the Sheriffs Tourn; and for Indictments taken in Leets, See *Brit. Lett.* 1. And yet by the book 8 H. 4 fol. 18. it seemeth that Indictments or Presentments of Felony taken in the Leet, shall be delivered over to the Justices of Gaol delivery. *Br. Franch.* 5.

Also in some cases of Treason and misprision of Treason, the Justices of Peace may inquire, and take Indictments, but cannot proceed to triall, or to heare and determine the same.

As of mayntainers of the authority of the Bishop, or See of *Rome*; 5 *Eliz.* 1. and of their procurers, and mayntainers, &c. the Justices of Peace in their Quarter Sessions may inquire of such offences; But they must certify every Presentment thereof made before them, into the Kings Bench (within forty days, upon forfeiture of an hundred pounds by every Justice of Peace there present, not making certificate accordingly) 5 *Eliz.* cap. 1.

2. So of such as shall obtain from *Rome*, &c. any Bulls, or absolution; 13 *Eliz.* 1. Or shall publish or put in ure any such Bull; Or shall give or take absolution, by colour of any such Bull; 23 *Eliz.* 1.

And their procurers, and maintainers, &c.

And the concealers of such Bull, or absolution offered to them.

3. So of such as shall withdraw any subject from the Religion now used, to the Romish Religion; Or from their obedience to the Kings Majesty; Or to the obedience of the Pope, &c. 23 *Eliz.* 1.

And of such as shall be so withdrawn.

And of their procurers, and maintainers, &c.

And of the concealers of such offences.

4. So of such as shall bring into this Realme any *Agnus Dei*, or other superstitious Pictures, or Beads; Or shall deliver, or offer any such to any subject: 13 *Eliz.* 2. 23 *Eliz.* 1.

And of the Receivers of such superstitious things.

For all these last recited offences against the Stat. 5 *Eliz.* 1. 13 *Eliz.* 2. & 23 *Eliz.* 1. See more fully, *postea tit. High Treason.*

And if any such offender against any of these last mentioned Statutes shall be brought before any Justice of Peace, and charged with any such offence, it shall be the Justices part, to take the examination of such offenders, and to binde over the Accusers and (materiall) Informers, to appear (and to prefer a Bill of Indictment, and thereupon to give in Evidence to the Inquirors, against such offenders) at the next quarter Sessions (as it seemeth;) or rather at the next Assises, or generall Gaole delivery; Or else in the Kings Bench, whensoever (upon reasonable warning) they shall be thither called; And then to commit the offender to the Gaol; And after to certifie the said examinations, informations, and Recognizances (by him taken) to the said Sessions, or Gaol delivery, or into the Kings Bench, &c.

In other cases of High Treason, or Misprision of Treason, what the Justices of Peace out of their Sessions shall doe with such offenders brought before them, See *Postea tit. Misprision, cap. 90.*

But now to return to the businesse of the Justices of Peace out of their Sessions.

If one shall bring a man suspected of Felony before any Justice of Peace, but refuseth to be bound to give Evidence against the prisoner, (either at the Generall Gaol delivery, or Quarter Sessions, as the case shall require) If such bringer hath given Evidence before the said Justice against the prisoner, or can declare any thing materiall to prove the Felony; and will not be bound to give Evidence upon his triall, the Justice of Peace (upon his discretion) may commit to prison such person so refusing, or may bind him to his good behaviour. But if the bringer of a person suspected of Felony, cannot declare any thing materiall to prove the Felony, nor any other person then present, it seemeth the Justice ought not to commit the prisoner: And so was the direction of Sir *David Williams*, at the Assises at *Cambridge* aforesaid. Yet the Justices shall do well to examine the prisoner, and if he shall confesse the Felony, then to commit him; Or if upon his examination, there shall appear any just cause of suspicion; Or if the prisoner be a man of evill fame, and that there be a Felony committed; in these cases, the Justices shall doe well not to let him go, but at least to bind him over to the next Gaol delivery, and in the mean time to take further information against him. See the other title, *Felony, cap. 109.*

**E**very Justice of Peace is a Conservator of Rivers, and of the Statutes made in that behalf, (sc. of the Statute of 13 Ed. 1. cap. 47. 13 R. 2. 19. 13 R. 2. cap. 19. & 17 R. 2. cap. 9.) within his County where hee is a Justice, and may appoint and swear under-conservators; and (when he may attend it) ought to survey all the Weares in the Rivers, that they be of a reasonable wideness, and all other defaults done against the aforesaid Statutes. West 2. 47. 13 R. 2. 19. P. Fish 1. P. Just. 14.

Every Justice of Peace, may burn the Nets, and other Engines, put or cast into waters, wherewith the fry or breed of any fish may be taken or destroyed; And this shall be for the first offence: and for the second offence, the said Justice of Peace may (as it seemeth) imprison such offenders for a quarter of a year; And for the third offence, one whole year: and as the trespass or offence increaseth, so may the Justice of Peace increase the punishment of such offenders. See the Statutes 13 E. 1. 47. 13 R. 2. 19. & 17 R. 2. 9.

By warrant of any one or mo Justices of Peace, the Constables and Church-wardens (where any offence is committed in destroying the spawn and brood of Sea-fish, against the Statute made, 3 Jac. Regis.) may leavy the forfeitures of the offenders by distresse and sale of the offenders goods, rendring to the offenders the surplusage. 3 Jac. 12.

The particulars of the said Statute, 3 Jac. Regis, are as followeth:

1 No person in any Haven, Harbour, or Creek, or within five miles of the mouth of any Haven, Harbour, or Creek of the Sea, shall fish with any draw-net, or drag-net, under three inches meash (*viz.* one inch and an half from knot to knot) except for taking of Smoulds in *Norfolk* only; And except for taking of Herring, Pilchards, and Spicots.

2 No person in any Haven, Harbour, or Creek, or within five miles of the mouth of any Haven, &c. shall fish with any Net with canvas, or other engine or device, whereby the spawn, fry, or brood of any Sea-fish may be destroyed.

And for every such offence, the offenders shall forfeit their Nets, and ten shillings in money; the one half thereof to be to the use of the poore of the Town or Parish where the offence shall be committed, and the other half to him that will sue for the same; and to be levied by the Major or other head Officer of every City, Borough or Town Corporate; or by warrant from one or mo Justices of Peace. *Vt supra.* 3 Jac. 12.



*Fish-days.*

3 I 46. 29.  
P. 2.

**E**Very Justice of Peace, in the Lent time, may enter into, and search all Viſtualling-houſes, and finding there any Beef, Mutton, Veal or Hogs killed or dressed (except flesh to be killed three days next before Eaſter) may take and ſeiſe the ſame as forfeit; and ſhall give the ſame to priſoners, and other poor folks, by their diſcretion.

*Forcible Entry.* C A B. 22.

15 R. 2. 3.  
8 H. 6. 9.  
P. 2.  
One Ju-  
ſtice.  
Dyer, 210.

**W**hat is Forcible Entry, and what is a forcible holding, or detainer, ſee the other title *Forcible Entry*, *hinc cap.* 77.

Every Juſtice of Peace, upon complaint to him made, or upon other notice to him given, of any Forcible Entry into, or holding, or detainer of poſſeſſion of any lands, tenements, or other poſſeſſions (or of any Benefices, or Offices of the Church) contrary to theſe Statutes, without any examining, queſtioning, or ſtanding upon the right or title of either party, ought in convenient time (at the coſts of the party grieved) to do execution of theſe Statutes in manner and form here under following. See *Lamb.* 150.

Dy. R. 2. 2.  
*Lamb.* 152.

1. Firſt, he ought to goe to the place where ſuch force ſhall be. And he may take with him ſufficient power of the County, or Town, by his diſcretion, and the Sheriffe alſo if need be to aid him, for the better execution of this buſineſſe; ſc. as well for the arreſting of ſuch offenders, as alſo for the removing of the force, and for the conveying of them to the next Gaol. And whoſoever (of that County) ſhall reſuſe to attend and aſſiſt the Juſtice of Peace herein, ſhall be imprifoned and make fine to the King; 15 R. 2. *cap.* 2.

Arreſt.

2. He ought to arreſt and remove all ſuch offenders, as at his coming he ſhall ſee, or find continuing the force; and may take away their weapons, harneſſe, and armour, and preſently cauſe them to be priſed, after to be answered to the King as forfeited, or the value thereof. *Mut. Libr. Intrac. ſit. faux imprisonment, diu.* 7.

If the doores be ſhut, and they within the houſe ſhall deny the Juſtice to enter, it ſeems he may break open the houſe to remove the force.

But if ſuch offenders being in the houſe, at the coming of the Juſtice, ſhall make no reſiſtance, nor make ſhew of any force, Then the Juſtice cannot arreſt, or remove them, except upon the enquiry after a force be found. See *Crompt.* 73. and the other title, *Forcible Entry*.

Alſo

Also if the house or land which is holden with force shall extend into two Counties, and the offenders remove their force into that part of the house or land which is in the other County, when the Justices do come, they cannot then remove the force. Cromp. 71.  
Record.

And if the Justice at his coming shall see or find a force, and shall remove the offenders, yet he may not upon this his own view, restore the party ousted, to his possession again, without enquiry first made of the force by a Jury, as appeareth hereafter.

3. Also the Justice ought to make a Record of such force by him viewed; which Record shall be a sufficient conviction of the offenders; and the parties shall not be allowed to traverse it. Record.  
14 H. 7. 8.  
Ca. 8. 137.

And this Record, (being made out of the Sessions by a particular Justice) the said Justice may keep by him: or he may make it indented, and certify the one part into the Kings Bench; or to leave it with the Clerks of the Peace; and the other part he may keep himself. Lamb. 152.  
163 & 375.

The forme of the Record, see the other title; *Forcible Entry*; among the Presidents. *Cap. 129.*

4. Also he ought to commit (immediatly) to the next Gaol, all such persons as he shall finde and see continuing the force at his coming, to the place; The said offenders there to remain convict by his own eye, testimony, and Record, untill they have paid a fine to the King (or given security for the payment thereof:) For this sight and view of the force by the Justice (being a Judge of Record) maketh his Record thereof (in the judgment of the Law) as strong and effectually, as if the offenders had confessed the force before him; and (touching the restraining of traverse) more effectually, than if the force had bin found by a Jury, upon the evidence of others. Imprison.  
21 H. 6. 5.  
Bry. Peace 43.  
Co. 8. 120.  
P. 2.

And yet the words of the Statute seem more large, *sc.* and if he do finde any that made any such *Forcible Entry*, or that hold the place with force, &c. he shall commit the offenders to the Gaol, &c. But such force must be in the presence or view of the Justice of Peace, or else he can neither record it, nor yet commit the offenders, *13 H. 7. Crook. 41.* P. 21.  
Cromp.  
195 b.

The forme of the *Mittimus*; see the other title, *Forcible Entry*, *Cap. 129.*

5. Also the same Justice of Peace, or some of them that shall see the force, (as having best knowledge of the matter, and of the quantity of the offence, and having the custody of this Record) are the proper Judges over this offence; and therefore may assess the fine upon every such offender: but the fine must be imposed upon every offender severally, and not upon them jointly; and the Justice ought to assess the same Fine.  
Co. 8. 42.  
Lamb. 163.  
597.  
Co. 43. 34.

fine, and to send the *Estreat* into the *Eschequer*, that from thence the Sheriff may be commanded to levy the said fine to his Majesties use. But upon the same fine so assessed and *Estreated*, it seemeth the Justice is to deliver the offenders; *Lambert 554.*

*Lamb. 162.*  
*555.*

*Br. Imp. 100*

Also upon payment of the said fine to the Justice, or upon Sureties found (by Recognizance) for the payment thereof, the said Justice may deliver the offenders out of prison again at his pleasure, by some opinions: But *quare* whether the Justice of Peace shall meddle with receiving the fine, for that the Sheriff is accomptant for all fines; *Lambert 555.*

*Cr. mp. 161.*  
*Lam. editio.*  
*1582.*

Or the Justices of Peace (by some opinions) may record such force, and commit the offenders; and after certifie the Record to the Justice of Assise, and Gaol delivery (as it was done at *Stafford Assises, Anno 26, Eliz.* by the report of Master *Crompton*; ) or else to certifie it to the generall Sessions of the Peace (as it seemeth to Master *Crompton*) and there the offenders may be fined; for, saith he, the Statute doth not say, that the fine shall be assessed by them that Record the force, more than by other Justices.

*Lamb. 163.*

Or rather the Justice of Peace may certifie or deliver the Record by him made (and referre the fine and further proceedings therein, ) to the Kings Bench (in regard of their supreme authority in such cases,) And this Master *Lambert* thinketh to be the safest course.

Enquire.

6 Also the Justice of Peace, notwithstanding his owne view of the force, may and ought in some good Town or place neer, where the force was (at the costs of the party grieved) to enquire by a sufficient Jury of the same County, to be returned by the Sheriff, as well of those which made such *Forcible Entry*, as of those which made such *Forcible Detainer*. See the Statute 8 *H. 6. cap. 9. & Plo. 86. a.*

And here note, that any one Justice of Peace alone out of the Sessions, may make an enquiry (being so appointed by the Statute; ) whereas otherwise there must be two Justices at the least, to make an enquiry, or to hold a Sessions, and one of them of the *Quorum*. *Br. Peace 14.*

*Forcib.*

And this enquiry ought to be made, whether the offenders be present or gone, at the coming of the Justice of Peace, yea, this enquiry the Justice must make, though he go not to see the place where the force is, for without this enquiry, there can be no restitution. See more concerning this enquiry in the other title, *Forcible Entry. cap. 80. &c.*

Also by the words of the Statute of 8 *H. 6. cap. 9. (maintenant mesme les Justices doivent enquirir, &c.)* the Justices are to make this enquiry immediatly after the force committed, and complaint made to them by the



the party grieved; and yet if they do make this inquiry at any convenient time after, it sufficeth. *Crompt. 124.*

If the Sheriff shall not duly execute the Justices precept directed to him for returning a Jury, he shall forfeit twenty pounds. And the Justice of Peace may proceed to heare and determine such default of the Sheriff. See 8 *H. 6. cap. 9. hic possea.*

The forme of a Precept to the Sheriff to return a Jury, *vide hic cap. 129.*

The form of the Enquiry, Presentment, or Verdict, see *hic cap. 129.* Restitution

7 And if upon such enquiry, such Forcible Entry (or forcible holding or detainer) shall be found by the oaths of the Enquirors, then the said Justices of Peace shall relesse the Lands and Tenements so entred upon or holden, and thereof put the party in possession again, which in such sort was put, or holden out. See the other title of *Forcible Entry, cap. 81. 82, 83. 84.*

But the putting out, as also the holding out, must of necessity be found, and that by expresse words in the Indictment. See as before.

And so note that the Justice or Justices of Peace, recording onely the force by his or their view, may not put the party put out, into his possession again; but the Justice must first make enquiry thereof, by twelve men of the County (at a speciall Session by the said Justices to be holden) and then the force being found by the said Jury, the said Justice (or Justices) may put the party so put out, into his former possession.

And this restitution, the Justice of Peace may make himself: or hee may make his Warrant to the Sheriff to do it: or else he may certifie such presentment or indictment, taken before him, into the Kings Bench, and so leave the restitution to be awarded out of that Court. See as before, *cap. 82.*

But the Justices of Assise and Gaol delivery, nor the Justices of Peace at their generall Sessions, cannot (as it seemeth make or award Restitution, except the indictment were found before them; but the Justices of Peace only, or some of them that were present at the enquiry, and when the indictment was found, (they only) have power to make restitution; except notwithstanding the Justices of the Kings Bench, who have a *cap. 118.* supream authority in all cases of the Crown.

And therefore if the Record, *sc.* the presentment of such force, shall be delivered by the Justices of Peace into the Kings Bench: or that the same presentment or indictment shall be removed and certified thither by *Certiorari*, there the Justices of the Kings Bench may award a Writ

of

of Restitution to the Sheriff of the same County, to restore possession to the party so expelled.

*P. R. 41. b.* After it be found by such Enquiry, that such *Forcible Entry* or *Deteiner* is made, the Justice of Peace may break open the house by force, to reseise the same, and to put the party, so put out, in possession again. And so may the Sheriff do, having the Justices Warrant.

The forme of such Warrant from the Justice of Peace to the Sheriffe, to make restitution, see in the other title of *Forcible Entry*, cap. 129.

But the Justices of Peace may not (in any case) make restitution, without such enquiry first had, and such force thereby found: And if the Justice shall make restitution without enquiry, it seemeth to be punishable in the Star-Chamber.

Also this restitution ought to be made to none but to him only that was put out; so that if the father be put out by force, and dieth (after enquiry, and before restitution) his heire shall not have restitution.

To whom restitution shall be made, see the other title, *Forcible Entry*, cap. 83.

Also, such restitution must be made onely where a man is put out, or holden out, &c. of House, or land, and is not to be understood of a Rent, Common, Advowson, or such like. See the other title, *Forcible Entry*, cap. 81.

Also, the Justice may make restitution, notwithstanding any offer of Traverse, but yet upon Traverse tendred, the safest way (for the Justice of Peace) seemeth to be; for him to deliver, or certifie the Presentment into the Kings Bench, and so to refer the further proceedings therein to them. See the other title, *Forcible Entry*, cap. 84.

And although these Statutes do inflict no penalty upon the Justices of Peace, if they shall not execute these Statutes; yet if (upon complaint, or other notice to them given of such force) they shall not at least remove the force, record it, and commit the offenders, they are punishable in the Star-Chamber.

In the case of *Drayton Bassett* (in the County of *Stafford*) about *Anno 22 Eliz.* certaine Justices of Peace of that County (although they dwelt not neere to the place) where a great Riot was committed, by a *Forcible Deteiner*, were for their default fined in the Star-Chamber, upon the Statute of 17 R. 2. cap. 8. (as Master *Crompton* reporteth) which Statute is, that the Sheriff, and all other the Kings Officers, shall suppress Rioters, which shall assemble themselves in outrageous or great number. See *Crompt. Auctor. des Courts*, fol. 32.

Although the Justice of Peace ought to commit to the Gaole, and may fine

fine all such as he shall see continuing their force at his coming to the place; yet upon force found by the enquiry onely; and not viewed and seen by the Justice (although this presentment of the Jury be a conviction of the offenders) yet it seemeth the Justice of Peace may neither fine, nor send to the Gaol the said offenders, (by the Statute of 8 H. 6. which appointeth the enquiry;) for the Justice hath power by the said Statute to make restitution only, as saith Master Lambert; 162. yet Master Crompton holdeth the contrary, sc. that the party indicted shall be fined for the force found, although the Statute of 8 H. 6. speaketh not of the fine. *Crompt. 162. b. 61. a.*

But howsoever, the Justice of Peace (upon force found by the Enquiry) is to remove the offenders that be present, that so he may restore the other; and may bind the offenders to their good behaviour: and if the offenders be gone, yet the Justice may make his Warrant to take the offenders, and may after send them to the Gaol, untill they have found sureties for their good behaviour.

Note, that if such Forcible Entry, or Deteiner shall be made by three persons, or mo, then it is also a Riot; and then (if there be no former enquiry thereof made) it seemeth the two next Justices of Peace (upon notice thereof) ought to enquire thereof (as of a Riot) by a Jury, *Crompt. 63. b.* within one moneth, upon pain to either of them making default to forfeit 100 li.

Also one Justice of Peace may (as it seemeth) heare and determine the defaults of Sheriffs and Bailiffs, in not returning sufficient Jurors (whereof every one shall have Lands, &c. to the value of forty shillings by the year at the least) before him, to enquire of such Forcible Entry, or Deteiner: and the said Justice of Peace may proceed therein, as well by Bill, at the suit of the party grieved, for himselfe, as also by indictment onely for the King; and the same Proceffe shall be made against such persons indicted, or sued by Bill in this behalf, as should be made against persons indicted, or sued by Writ of trespassse with force and arms against the Kings Peace: what the Proceffe in such case is, *vide tit. Proceffe c. 132.* *Defau'ts of Sheriffs. 8 H. 6. 9. p. 148. 89. Russ. 174. c.*

And though any one Justice of Peace may proceed in every of these former cases of Forcible Entry, or Deteiner, as aforesaid, yet if two or mo Justices shall joyn therein together, it is the better; for, *Plus vident oculi, quam aures; Et securius expediuntur negotia commissa pluribus.* *Co. 4. 46.*

Also the Major, Justice, and Justices of Peace, and the Sheriffs and Bailiffs of Cities and Boroughs having Franchise, shall have in the said



Cities, Towns, and Boroughs, like authority to remove such Entries, and to enquire of such Entries or putting, or holding out, and in other Articles afore said, rising within the same, as the Iustice of Peace and Sheriffs in Counties and Shires have.

The Star.  
of North-  
ampton  
2 Ed. 3. 3.

Also every Iustice of Peace to whom a Writ upon the Statute of *Northampton* (concerning the removing of a force) shall be delivered, ought to execute the same Writ, (sc: he ought to remove the force; and to certifie his doings therein into the Chancery.

And for that the Iustice of Peace, to whom this Writ shall be delivered, is herein but a Minister, and is to certifie that which hee shall doe therein, I will here set downe the manner how hee shall proceed to execute this Writ.

First, when the Iustice of Peace shall come to the place where the force is supposed, by this Writ; hee may cause three *O yes* for silence to be made, and then he may make Proclamation in the Kings Name to this effect:

Lamb. 173.

*The Kings Majesties Iustice of Peace straightly chargeth, and in his Ma. Name commandeth all and every person so keep silence, whilst his Majesties Writ, &c. be read, and proclamation be thereupon made accordingly.*

2 Then may he read, or cause to be read, the Writ, or may declare the effect thereof.

3 Then let three other *O yes* be made; and thereupon make Proclamation again, as followeth.

Ritz 249 f.

*His Majesties said Iustice, doth in his Highnes Name; and by vertue of his Majesties Writ, straightly charge and command, that no manner of person, of what estate, degree, or condition soever, now being within the house of B. &c. (named in the said Writ) shall go armed, or keep force of armour or weapon, nor do any thing there, or elsewhere, in disturbance of his Majesties peace, or in offence of the Statute made at Northampton, in the second year of King Ed. 3, upon pain of losing his said armour and weapons, and of imprisoning his body at his Majesties pleasure.*

God save the King.

4 Then the Iustice of Peace may enter, and search whether there be any force of armour or weapon worn or born, against this Proclamation: otherwise he may enquire thereof by a Jury (for so the Writ it self doth warrant him :) and if after Proclamation any such offenders be found, he ought to imprison the offenders, and to seize to the Kings use, and prise. (by the oaths of some present) the armour and weapons so found with them; and the offenders so imprisoned, are to remain in prison until that some other commandment be given concerning them from

from his Majesty, or his Iustices. See the Writ, *Fitz. 249.* and the title, *Bailment, postea.*

But if upon the Proclamation made, they do depart in peaceable manner, then hath the Iustice no Warrant by the Writ to commit them to prison, nor to take away their armour.

But when the Iustice hath removed the force (upon this Writ) he may not put the party that was put out, in possession again; for if hee do, it seemeth both the Iustice, and the party also, are punishable in the Star-Chamber: for the Writ doth authorize the Iustice only to remove the force, and not to make restitution.

*Crompt. 74.  
162.*

The form of this Writ upon the Statute of *Northampton*, you may see in *Fitz. N. B. 249.*

The form of certificate, or return, into the Chancery, of this Writ, see in the other title, *Forcible Entry, cap. 129.*

Also every Iustice of Peace (*ex Officio*; and without any Writ) may do execution of this Statute of *Northampton*, and that as well by force of the Commission, as also of the said Statute.

Without  
Writ.  
*2 Ed 3. 3.  
P. Armour.  
Lamb. 176.*

The manner to execute this Statute, by the Iustice of Peace (*ex officio*) seemeth to be all one, as before, where hee hath a Writ delivered him; saving that when he doth this *ex Officio*, and without Writ, hee needeth not to make any Proclamation, nor to send any certificate into the Chancery; but the Iustice may go to the place where the force is, and (if it be in an house) he may enter and search, if any force of armour or weapon be worn or born against this Statute; and if any such offenders be found, he may commit them to prison, and may seize and prise the Armour and Weapon so found with them; and he ought to record all that which he shall do in this behalf, and thereon to send some E<sup>q</sup>reat into the Exchequer, that the King may be answered of the Armour, or of the value thereof.

But here again the Iustice must not make any restitution of the possession to the party ousted, but must only remove the force.

And concerning the offenders so found, and committed by the said Iustice of Peace, it seemeth the Iustice (at his discretion) may fine them, and upon payment thereof, or upon sureties found for the same, that the said Iustice may deliver the offenders, even as in the former Statutes of *15 R. 2. & 8 H. 6.* Or else the said Iustice may record such force, and commit the offenders, and after certifie the Record into the Kings Bench, or to the Iustices of Gaol delivery, or to the general Sessions of the Peace, as here in this title a little before.

*Crompt. 160.  
Lamb. 176.  
556.*

## Games unlawfull. CAP. 23.

1 Caroli 1.

**T**Here shall be no meeting of people out of their owne Parishes on the Lords Day (or Sunday) for any sport or pastimes whatsoever: nor any Bear-baiting, Bul-baiting, Enterludes, common Playes, or other unlawfull Exercises of Pastimes, used by any within their own Parishes, upon pain that every person offending in any the premises, doe forfeit for every offence three shillings foure pence, to be employed to the use of the poore of the same Parish where the offence shall be committed. And any one Justice of Peace of the County (or the chief Officer of any City, Borough, or Town Corporate) upon his or their view or confession of the party, or proof of any one witnesse by oath, shall give warrant under his hand and Seal, to the Constables or Church-wardens of the Parish where the offence shall be committed, to levy the said penalty by distresse, and sale of the offenders goods (rendring them the over-plus;) and in default of distresse, the offenders to be set in the Stocks by the space of three houres. Provided that none be impeached by this Act, except he be called in question within one moneth next after the said offence committed, 1 Caroli Regis, cap. 1. & 3 Caroli, cap. 4.

King James of happy memory, Anno Domini 1618, publicly declared to his Subjects, these Recreations or Exercises here under mentioned to be lawfull, that is to say, Dancing of men or women; Archery, Leaping, Vaulting, May-games, Whitson-Ales, Morisdances, and setting up Maypoles, and other Sports therewith used. And commanded that no such honest mirth or recreation should be forbidden to his Subjects upon the Sunday or Holydays after Divine Service (sc. Evening Prayer) ended: Restraining and barring notwithstanding from this liberty all Recusants, and all such as absent themselves from Church upon those days: Commanding each Parish by it self to use these Recreations, and only after Evening Prayer ended. And prohibiting all unlawfull Games to be used upon Sunday, as Bearbaiting, Bull-baiting, Enterludes, and Bowling by the meaner sort.

All which our now gracious Sovereigne King Charles, by publike Declaration, Anno Domini 1633, hath confirmed, allowing further the Feasts of the Dedication of Churches, commonly called Wakes, and all manlike Exercises to be there used with all freedome, yet so as none bring any Weapons thither. Commanding all Justices of Peace to looke that no disorders be at such Wakes, but to be prevented or punished, &c.

Every



Every Justices of Peace may from time to time (as well within Liberties, as without) enter into any common house or place, where any playing at Dice, Tables, Cards, Bowls, Coys, Cails, Logats, Shove-groat, Tennis, casting the Stone, \* Foot-ball, or other unlawfull Game, now invented, or hereafter to be invented, shall be suspected to be used; and may arrest the keepers of such places, and imprison them, till they finde sureties by Recognizance, no longer to occupy any such house, play, game, Alley, or place.

33 H.8 9:

P. Inst. 64.

Plays 5.

\* 12 R. 2. c. 6

Lamb. 196.

Also he may arrest and imprison (without bail) the Players, till they be bound by themselves, or with sureties, by Recognizance to the Kings use, no more to play at, or haunt to any of the said places, or games, *ibid.*

The said Statute of 33 H.8. prohibiteth all manner of persons to play (at any unlawfull Game) in any common house, Alley, or place; except the keeper of such house, or place have a Placard, containing what games shall there be used, as also what persons shall play thereat; and then such persons may play there, &c.

Also the said Statute prohibiteth all Artificers, Husbandmen, Labourers, Mariners, Fishermen, and Watermen, and all Apprentices and Servants whatsoever, to play at any unlawfull game, in any place, or at any time, except in Christmas time only, and in their houses; or servants in their Masters houses, and by their Masters licence; Or Serving men within the precinct of their Masters house, Garden or Orchard, and by their Masters licence. Also no manner of person shall at any time play at any Bowles, in any open places, out of his Garden or Orchard, P. 4.

Every Justice of Peace finding or knowing any person to exercise or use any of the aforesaid unlawfull games (contrary to this Statute of 33 H.8. cap. 9.) may committ him to ward, there to remaine without bail, untill he become bound (in such summe of money as the said Justice shall thinke reasonable in his discretion) that he shall not from henceforth use such unlawfull Games, *Ibid.*

Although these Games aforesaid, are by Statute prohibited; as unlawfull for some places, persons; and times, yet are they not unlawfull or evill of themselves, but are matters of Recreation and pleasure (though some of them more vain and more idle then others) and the King by his Prerogative, may tolerate and licence the moderate use of all such games, as it shall seem good to his Majesty, Co. 11. 85 b.

Note also, that playing at Cards, Dice, and the like, are not prohibited by the Common Laws of this Realme (except that one be deceived by false Dice, or false Cards, and then he that is deceived may have his Action of the case for such deceit :) neither are they *malum in se*, or of their

their own natures, for then none might be tolerated or licenced to use them; whereas the Statute doth except and tolerate certain persons, places, and times. And yet good Divines do hold divers of these Recreations to be altogether unlawfull, as being actions wherein wee neither blesse God, nor look to receive a blessing from God; nay, such as we dare not pray to God for a blessing on them, nor on our selves in the use thereof. But especially on the Sabbath day, all such Recreations and Games are holden unlawfull; for if lawfull works be forbidden on that day, much more unlawfull sports (yea, such Sports and Games, which otherwise, and at other times are lawfull.) See *47* 58. 13.

## Guns. C A P. 24.

One Ju-  
stice.  
*Dyer* 254.  
*Co* 11. 87.  
33 H 8. 6.  
\* *Co* 5. 71.  
*P* 1. 2, 6.

**VV** Hosoever shall shoot in, carry, keep, use, or have in his house or elsewhere, any Guns, Crossebows, (\* Dags, Pistols, or Stonebows) contrary to the Statute of 33 H. 8. 6. Every person seeing, or knowing this, may arrest or attach the offenders, and bring or convey them to the next Justice of Peace in the same County (where they were found offending) which Justice upon due examination and proof thereof before him had, or made, by his discretion, may commit the offenders to the Gaol, there to remain untill they have paid the penalty of the Statute, *sc.* x. li.

The effect and particulars of which Statute, be as followeth:

*P* 1.  
*Co* 5. 72.

1 No person may shoot in, or keepe, any Gun, Dag, Pistoll, Crossebow, or Stone-bow, except he hath *per annum* 100 li. in lands, tenements, fees, annuities, or offices.

*P* 2.  
\* *Co* 5. 72

2 No person may shoot in, carry, keep, use, or have any Hand-gun under one whole yard in length, nor any other Gun (\* Dag, or Pistoll) that shall be under three quarters of a yafd in length.

Every person having in land &c. 100 li. *per annum*, may seize and take from the offender, every Gun (Dag, and Pistoll) shorter then is before limited, and every Crossebow (or Stone-bow) from him that hath not 100 li. *per annum*: and may keep such bow, but must breake such Guns within twenty days next after such seizure.

But now by the Statute made 3 *Iacobi Regis cap.* 13. if any person, not having lands, &c. of the yeerly value of forty pounds, or not worth in goods two hundred pounds, shall use any Gun, Bow, or Crossebow, to kill any Deer or Conies, or shall keep any Buckstall or Engine, Hayes, Gate-nets, Pursnets, Ferrets, or Coney-dogs, (except such person shall have

have any ground inclosed, used for the keeping of Deer, or Conies, &c. or be Keepers, or Warriners) any person having in lands an hundred pounds by the year, in fee, or for life, may take from such Malefactours, and to his own use for ever keep, such Guns, Bows, Crossebowes, Buckstalls, or Engine, Hayes, Gate-nets, Pursnets, Ferrets, and Coney-dogs.

3 No person may carry in his journey, any Gun (Dag, or Pissoll) <sup>P.3</sup> charged, or Bow bent (but onely in time and service of war, or in going <sup>Lamb 462.</sup> to or from Musters) except he hath *per annum* 100 pounds in lands, &c.

4 No person may shoot in any Gun, &c. within any City, Borough, <sup>P.4.</sup> or Market-town; nor within one quarter of a mile of any City, Borough, or Market-town, except for the defence of his person, or house; or at a But or bank of earth, and in a place convenient. <sup>P.4.</sup>

5. The Master may not command his servant to shoot in any Gun, <sup>P.5.</sup> or Crossebow, &c. except at But or bank of earth, or in time of war.

Except notwithstanding out of this Statute, shooting at But or bank <sup>P.7,8;9.</sup> of earth, by Serving-men (whose Masters are enabled by Statute) and by inhabitants of Cities, Boroughs, and Market-towns; except also all Lords, Knights, Esquires, and Gentlemen, and the inhabitants of every City, Borough, and Market-town, as also all persons dwelling alone, or neere the Sea, and makers and sellers of Guns, &c. these may keepe Guns, &c. of the length aforesaid, in their houses (yet onely to use, and shoot therein, at a But, or bank of earth :) and persons having lawfull Placards, they may shoot according to such Placard or Licence. See other exceptions there.

But for as much as in these former cases the Justice of Peace hath the whole matter committed to himself, and that such offenders remain convicted upon his examination, and proof of witness made before him, therefore hee ought to be circumspect in his examination, as also in his *Admittimus*: and further to make a Record of the matter, (in writing under <sup>Lamb. 191.</sup> his hand) and also to send the Extract of it into the Exchequer, where by the Kings duty may be levied.

The form of such *Admittimus*, *vide hic cap. 126.*

The form of the Record, see there also.

All persons which shoot in Guns (whether they be authorized to <sup>2 E. 6. 14.</sup> shoot, or otherwise) ought to present their names to the next Justice of <sup>P.17.</sup> Peace, and such Justice shall cause the Clerke of the Peace to record or register their names: but *quare* if this be now in use, <sup>Lambert 196.</sup>

Any two Justices of Peace may commit to the Gaol for three months, <sup>Two Justices.</sup> &c. every such person as shall shoot with any Gun, or Bow, at any Par- <sup>1 Stat. 27.</sup> <sup>P. Fejans 66.</sup> tridge,



tridge, Pheasant, house-Dove, Mallard, or such Fowle, or at any Hare. See more in the title *Partridges*.

But note that the Sheriff, or any of his Officers, for the better executing of their office, may carry with them Hand-guns, Dags, or other weapons, (invasive or defensive) notwithstanding the Statute of 33 H. 8. c. 6 Co. 5. fol. 72.

## Hawking. C A P. 25.

P. Fesant, 11 6.  
P. Luff, 3 8 9

**E**VERY Justice of Peace may examine the offences, for Hawking or hunting with Spaniels in eared or coddled Corn, and may binde the offenders with good Sureties to appear at the next generall Sessions of the Peace, to answer their said offences, 23 Eliz. 10. It seemeth requisite also that the Justice do binde over the witnesses, which shall discover the offence.

Against Hawking at Pheasant or Partridge betweene the first day of July, and last of August: See 7 Jac. 11. *hic titulo Partridges*.

Hawks that be found shall be delivered to the Sheriff, *vide titul. Felonies by Statute*.

Hawks, where the taking, or concealing them, is Felony: See there also.

## Highways. C A P. 26.

Co. L. 38.

**N**Ote that there are three kinde of ways. *sc.*

1 A Foot-way, called *Iter, quod est ius eundi vel ambulandi hominis*.

2 A Foot-way and Horse-way, called *Actus ab agendo*, and this vulgarly is called a Pack or Drift-way, and is both a Foot-way and Horse-way.

3 The third a Cart-way, &c. called *Via*, or *Aditus*, (and containeth the other two, and also a Cart-way) for this is *Ius eundi, vebendi, & vehiculum & jumentum ducendi*: And this is two-fold.

*Via Regia*, the Kings High-way for all men: with this onely the Justices of Peace are here to meddle.

*Viz.*

*Communis Strata*, belonging to a City or Towne, or betweene neighbours.

Every

Every Justice of Peace may cause the High-ways to Markets to be enlarged, and cleansed of bushes and trees (so that there be neither bush, wood, nor tree, within two hundred foot of either side of the way: the Statute 13 E. 1. excepteth Ashes, and great trees, but by the Statute 5 El. all trees therein are to be cut downe) &c. And this the Justice of Peace may doe by force of the Commission, the first *Assignavimus* (Lamb. 190) but how the Justice shall compell the same to be done, I see not otherwise then by admonition, and if that be not obeyed, then to present it, or cause it to be presented at the Quarter Sessions, &c. *Vide tit. Commission of the Peace.*

Also by the Articles of Inquisition upon the Statute of Winchester, (made about 34 E. 1.) It is appointed that if these High-ways be not enlarged accordingly, enquiry shall be made where the ways be, who ought to enlarge them, and of such as doe hinder such enlargements, as well in Parks, as in other Woods. See *Poultons Statutes at large*, 93.

Every Justice of Peace (upon his owne knowledge) may present in open generall Sessions, any High-way not sufficiently repaired, and amended, within the County and Limits of his Commission. *5 Eliz. 13. P. Just. 69 Cromp. 131.*

Every Justice of Peace (upon his owne knowledge) may present in open generall Sessions, any other default or offence committed (within the County and Limits of his Commission) contrary to the Statutes of 2 & 3 P. & M. 8. & 5 Eliz. cap. 13. concerning the amendment of Highways: and every such presentment shall be of the force of a presentment of twelve men (*sc.* shall be a good Indictment against the offenders.) So that upon such presentment, the Justices at the said Sessions may asseesse the fine upon such offenders, and that in the absence of the party, and without calling them to it by any Processe (saving to every offender their lawfull Traverse.) *Ibidem.*

So that every Justice of Peace may present, as aforesaid, all and every these defaults following, being all contrary to the said Statutes, &c. *2 & 3 P. & M. cap. 8. 5 Eliz. 13. 29 Eliz. 5.*

1 IF the Constables and Churchwardens of every Parish yearly upon the Tuesday, or Wednesday in Easter weeke, doe not call together the Parshioners, and do not then also chuse Surveyors. for the amending of High-ways in their Parish leading to Market-towns, according to the Statutes, 2 P. & M.

2 If six days be not by the Constables, and Churchwardens then also appointed for that purpose, and to be before Midsummer following, 2 P. & M. & 5 Eliz.

3 If notice of the said dayes be not given the Sunday after Easter 2 P. & M.

tridge, Pheasant, house-Dove, Mallard, or such Fowle, or at any Hare. See more in the title *Partridges*.

But note that the Sheriff, or any of his Officers, for the better executing of their office, may carry with them Hand-guns, Dags, or other weapons, (invasive or defensive) notwithstanding the Statute of 33 H.8.c.6 Co.5. fol.72.

## Hawking. CAP. 25.

P. F. 11. 6.  
P. 11. 8. f

**E**VERY Justice of Peace may examine the offences, for Hawking or hunting with Spaniels in eared or codded Corn, and may binde the offenders with good Sureties to appear at the next generall Sessions of the Peace, to answer their said offences, 23 Eliz. 10. It seemeth requisite also that the Justice do binde over the witnesses, which shall discover the offence.

Against Hawking at Pheasant or Partridge betweene the first day of July, and last of August: See 7 Jac. 11. *hic titulo Partridges*.

Hawks that be found shall be delivered to the Sheriff, *vide titul. Felonies by Statute*.

Hawks, where the taking, or concealing them, is Felony: See there also.

## Highways. CAP. 26.

Co. L. 56.

**N**Ote that there are three kinde of ways. *sc.*

1 A Foot-way, called *Iter, quod est ius eundi vel ambulandi hominis*.

2 A Foot-way and Horse-way, called *Actus ab agendo*, and this vulgarly is called a Pack or Drift-way, and is both a Foot-way and Horse-way.

3 The third a Cart-way, &c. called *Via*, or *Aditus*, (and containeth the other two, and also a Cart-way) for this is *Ius eundi, vebendi, & vehiculum & jumentum ducendi*: And this is two-fold.

*Via Regia*, the Kings High-way for all men: with this onely the Justices of Peace are here to meddle.

*Viz.*

*Communis Strata*, belonging to a City or Towne, or betweene neighbours.

Every



Every Justice of Peace may cause the High-ways to Markets to be enlarged, and cleansed of bushes and trees (so that there be neither bush, wood, nor tree, within two hundred foot of either side of the way: the Statute 13 E. 1. excepteth Ashes, and great trees, but by the Statute 5 El. all trees therein are to be cut downe) &c. And this the Justice of Peace may doe by force of the Commission, the first *Assignavimus* (Lamb. 190) but how the Justice shall compell the same to be done, I see not otherwise then by admonition, and if that be not obeyed, then to present it, or cause it to be presented at the Quarter Sessions, &c. *Vide tit. Commission of the Peace.*

One Justice.  
13 Ed. 1. 5.  
P. 18.  
See postea  
tit. Robbery.

Also by the Articles of Inquisition upon the Statute of Winchester, (made about 34 E. 1.) It is appointed that if these High-ways be not enlarged accordingly, enquiry shall be made where the ways be, who ought to enlarge them, and of such as doe hinder such enlargements, as well in Parks, as in other Woods. See *Poultons Statutes at large*, 93.

Every Justice of Peace (upon his owne knowledge) may present in open generall Sessions, any High-way not sufficiently repaired, and amended, within the County and Limits of his Commission.

5 Eliz. 13.  
P. Just. 69  
Cromp. 131.

Every Justice of Peace (upon his owne knowledge) may present in open generall Sessions, any other default or offence committed (within the County and Limits of his Commission) contrary to the Statutes of 2 & 3 P. & M. 8. & 5 Eliz. cap. 13. concerning the amendment of Highways: and every such presentment shall be of the force of a presentment of twelve men (*sc.* shall be a good Indictment against the offenders.) So that upon such presentment, the Justices at the said Sessions may assesse the fine upon such offenders, and that in the absence of the party, and without calling them to it by any Proceffe (saving to every offender their lawfull Traverse.) *Ibidem.*

5 Eliz. 13.  
Cromp. 131.

So that every Justice of Peace may present, as aforesaid, all and every these defaults following, being all contrary to the said Statutes, &c.

2 & 3 P. & M. cap. 8.  
5 Eliz. 13.  
29 Eliz. 5.

**I**F the Constables and Churchwardens of every Parish yearly upon the Tuesday, or Wednesday in Easter weeke, doe not call together the Parishioners, and do not then also chuse Surveyors, for the amending of High-ways in their Parish leading to Market-towns, according to the Statutes, 2 P. & M.

P. 1.

2 If six days be not by the Constables, and Churchwardens then also appointed for that purpose, and to be before Midsummer following, 2 P. & M. & 5 Eliz.

P. 2.

3 If notice of the said dayes be not given the Sunday after Easter 2 P. & M.

M

openly

openly in the Church, by the Constables and Church-wardens.

P. 3, 4.

R. 11. 199.

Lamb. 459.

2 P. & M.

4 If every person having in his occupation, a Plowland in Tillage or Pasture in the same Parish; or keeping there a Plow, or a Draught, doe not send at every day and place appointed, &c. for every Draught, or Plowland in Tillage or Pasture, one Cart furnished with necessary tools, and two able men with the same: and that they do such works as they shall be appointed (by the Surveyors) by the space of eight houres, every of the said six days.

P. 13, 14.

But by the Statute 18 Eliz. 9. he that shall occupy a Plowland in tillage or pasture, lying in severall Parishes, shall be chargeable only in the Parish where he dwelleth: and he that occupieth severall Plowlands as aforesaid, in severall Parishes, shall be charged in each Towne or Parish where such Land lieth; so to finde in each Town or Parish, one Cart furnished as aforesaid.

P. 3.

5 If any of the carriages shall not be thought needfull by the Surveyors upon any the said days, if then every such person shall not send two able men for every Cart of theirs so spared, 2 P. & M.

P. 4.

6 If every other Housholder, Cottager, or Labourer (able to labour, and being no hired servant by the year) do not by himself, or one sufficient Labourer, work every of the said six dayes by the space of eight houres, as they shall be appointed by the Surveyors, 2 P. & M.

A Cottage, one describeth to be, *Casa rustica ex leviori materia excitata, arundine aut ulva palustri tecta.* Minsh.

And he is a Cottager that dwelleth in such a Cottage or House, without land belonging to it, 4 E. 1. Stat. 1.

P. 12.

7 Note that all persons being chargeable but as Cottagers, yet if they be in the Subsidy v. li. in goods, or xl. s. in lands, or above; they shall find two able men to work every of the said six days (by the Statute 18 EL. cap. 9.) But it seemeth the Justice cannot present such default upon his own knowledge.

P. 7.

8 If all fences, hedges, and ditches, next adjoyning on either side any High-way, be not from time to time diked, scoured, repaired, and kept low by the owners of the ground, 5 EL. & 18 EL. 9.

9 If all trees and bushes growing in the High-ways, be not cut down by the owners. 5 EL.

Note, that the Kings High-way (or *Regia via*) leading either to the Market, or from Town to Town, the Freehold, and soile thereof, and the interest of all the trees, and other such profits thereupon growing, doe belong to the Lord of the Soile, or the Lord of the Mannor, 17 Ed. 3. fol. 43. & 8 E. 4. fol. 9. Br. Chemin. 10, 11, & 27. H. 6. fol. 9. Br. Lect. 3.

And

And therefore such Lords are chargeable to cut down the trees and bushes growing in such High-ways : and yet by the opinion of *Keble*, 8 *H.7. fol.5.* the Free-hold of the High-way, and the trees thereupon growing, are belonging to him (*sc.* to any Free-holder) that hath the Land next adjoyning, *Br. Nufance* 28. but it seemeth this must be understood of common Field-ways, or other private ways, and not of the Kings High-way. See 2 *Ed.4. fol.9. & Briton fol.111.*

Note also, that hee which hath Land adjoyning next to the Kings High-way, by the Common Law (before these Statutes) was and is chargeable and bound of common right, to cleanse and scoure the ditches adjoyning to the said way (*sc.* between his Land, and the High-way.) 8 *H.7. fol.5. d. Br. Nufance* 28.

At Lent Assises at *Cambridge*, Anno 1622, Sir *James Ley* delivered it in his charge, that if any person hath made, or shall make any inclosure next the Kings High-way, that such person shall be charged to amend the High-way adjoyning to his said inclosure. And if one man hath inclosed on the one side or part; and another man of the other side, they shall be both charged to amend the same way.

Otherwise, High-ways must be sufficiently amended at the Charge of the whole Town; And it is not enough for the Inhabitants to doe their full six days work yearly, except their ways be all well and sufficiently repaired; For if all their said ways be not sufficiently amended, the whole Town may be indicted therefore.

Because every Town regularly is to maintaine and amend the High-ways within their own Parish; except it can be proved to have been usually amended by any other person, or Town, or by the Hundred, or County, &c. And therefore if sixe dayes works in the yeere will not serve to amend them, the Surveyors may, yea, must appoint moe dayes, &c.

Also concerning the Causey (neere *Cambridge*) called Doctour *Harveyes* Causey, towards the repair whereof Doctour *Harvey* hath given eight pounds *per annum* (payable by the Master and Fellows of Trinity Hall in *Cambridge*) Sir *James Ley* said, that if this 8 li. *per annum*, were not sufficient to repaire the said Causey, that then the Towns adjoyning, within which that Causey or Way doth lye, ought to help to repaire the same.

It is called the Kings High-way, for that the King at all times, hath therein passage for himselfe and all his people; and may punish all Nufances therein; though otherwise the interest thereof be in the Lord, to take all the trees and such other profits there growing, and to bring



his action for digging therein, or for any other like trespass there done.

*Fitz N. Br.* And the King (by the Common Law) may award his Commission  
*113. d.* for the amending of the High-ways and Bridges thorowout his Realm, so as his people may have safe passage thereby.

*P. 1.* 10 If any chosen to be Surveyor, shall refuse the office, or will not take upon him the execution thereof, *2 P. & M.* every Justice of Peace may present this as aforesaid.

*P. 8.* 11 So if the Surveyors shall not within one moneth after any of the former offences committed, present every such offence to the next Justice of Peace. *5 Eliz.*

*P. 10.* 12 Also if the Bailiffe, or high Constable (who hath received an  
*Raff. 199 o.* Estreat for the levying of any forfeiture upon these Statutes) shall not  
*2 P. & M* levy the same; or shall not (between the first day of *March* and last of *April*, yearly) make a true account, and payments of all such sums as he hath levied, to the Constables & Churchwardens of every Parish wherein the offence was committed; or if the Constables and Churchwardens have not imployed the same upon their High-ways: it seemeth every Justice of Peace may (upon their own knowledge) present every of these defaults, as aforesaid.

*P. 3.* And if the Surveyors shall present any of the former offences (by them to be presented) to the next Justice of Peace, within one moneth next after the offence committed; the same Justice ought to certifie such presentment, at the next generall Sessions *sub poena*, v. li. But if the Surveyors do not make their presentment to the Justice till after the moneth, and the Justice certifieth it, this seemeth not good against the offenders.

*The Sur-* Every such Surveyor (for the better amendment of the ways within  
*veyors au-* the Parish) may by their discretion take and carry away the rubbish, or  
*thority.* smallest broken stones of any Quarry within their Parish. *sc.* such rub-  
*5 Eliz. 13.* bish as they shall finde there ready digged, by the owners of the said  
*P. 5.* Quarry, or otherwise by their licence.

*Ibid.* Every such Surveyor may also (for the use aforesaid) dig for and take, or cause to be digged for, and taken (in the severall grounds of any person within that Parish, neer adjoyning to the way to be amended) any gravell or sand; so as they dig in no mans Garden, Orchard, or Meddow, and but one onely pit, and not above ten yards over at the most, and the same within one moneth to be filled up again with earth, at the charge of the Parish.

*Ibid.* Every such Surveyor may likewise cause stones to be gathered up on any mans ground within the Parish, and the same to carry away for the use aforesaid.

Every

Every such Surveyor may cause any water-course, or spring of water (being in the High-way within their Parish) to be turned into another mans severall ditch (or ground) next adjoyning to the said way, in such manner as by the discretion of the said Surveyor shall bee thought meet. P. 6.

Also any two Justices of Peace (the one being of the *Quorum*) upon complaint to them made by the Church-wardens of any Parish, may convene before them, the Bailiffe and high Constables (to whom the Clerk of the Peace, or Steward of any Leet hath delivered any Estreats for the collecting of the fines, forfeitures, and amerciaments for the defaults aforesaid) and may take their accounts; and may compell them to pay all such arerages, as they shall adjudge, to the Constables and Churchwardens of the Parish where the offence was committed, or may imprison them untill they have payed such arerages. Two Justices.  
P. 11.  
2 P. & M.

Every Bailiff and high Constable upon their said accounts shall have allowed for every pound he shall collect and pay, 8 d. for his own pains, and 12 d. for the fee for the Estreat delivered him. P. 11.

Also it seemeth any two such Justices of Peace upon complaint to them made by the succeeding Churchwardens, or Constables, may convene before them the precedent Constables and Church-wardens, and may take their accounts, and may compell them (as aforesaid) to pay all arerages in their hands, Ibid.  
2 P. & M. 8.

Note that all such fines or forfeitures arising in the Sessions, shall be levied by Estreats indented, made by the Clerk of the Peace, who shall seal and signe such Estreats, and shall deliver the one part thereof so sealed and signed, to the Bailiffe or high Constable of the same Hundred; and the other part thereof to the Constables or Church-wardens of the Parish where such default was made; and to be delivered by the Clerke of the Peace within six weeks after Michaelmas yearly: the which Estreats shall be a sufficient warrant to the said Bailiffe or high Constable, to levy such fines and forfeitures by distresse; and all such fines and forfeitures shall be bestowed by the Church-wardens on the High-ways in the same Parish. 2 P. & M.

Also two Justices of Peace (by the Statute 18 *Eliz.*) may take the account of the Surveyors of the wayes, and of the petty Constables and Church-wardens, for all such forfeitures (within that Statute) as they have levied, P. 17.  
18 *Eliz. cap.* 10.

Here I thought good to move some doubts that have arose upon the former Statutes, and desire that some resolution may hereafter be given, for better satisfaction, for that they be so ordinarily questioned.

A Plow-  
land.  
Co. 9. 124.  
Co. L. 69.

What, and how much a Plowland is, Sir *Ed. Coke* in his ninth part, in *Lomes case* and upon *Littleton*, telleth us, and saith, That a Carve, or Hyde of Land (or a Plowland) which is all one, is not of any certaine content, but so much as one Plow may Plow in one yeer; and so in some Countrey it is more, and some other it is lesse (according to the heaviness of their Soile) and herewith agreeth *Maſter Lambert*, *verbo Hyde*.

And of the same opinion was Judge *Priscot* 35 H. 6. 29. where he saith, that a Carve of Land is greater in one Countrey, then in another, for that a Plow may Plow more land in the yeer in some Countrey then in another.

35 H. 6.

And yet some others do make a difference between an Hyde of Land, and a Carve, or Plowland: for they say, that an Hyde of Land doth contain four Plowlands, *ſc.* 480 Acres; whereas a Carve, or Plowland containeth but sixscore Aeres: and every Plowland or Carve, is foure yard Land (in Latine called *Quatrona terra*) every yard Land containing 30 Acres. But a Plowland, or Carve of Land, is called in Latine, *Carucata terra*, that is, *quantum aratrum arare poteſt in aſtivo tempore*: for which see *M. Skene*, *Minſh.* and the *Surveyors Dialogue* made by *John Norden*, pag. 59. And so this definition or description of *Carucata terra*, sheweth that it is not of any certain content.

Co. 4. 37 b.  
89. 124.

Also a Carve of Land (or a Plowland) may contain House, Medow, Pasture, and Wood. Co. L. 69.

I Now a man with one Plow and five or six horses will occupy, plow, and dresse 7 or 8 score Acres of arable Land yeerly, (as many do with us in the East parts of *Cambridgeshire*,) and will in Summer go usually with two Draughts or Carts; yet such person is usually charged to the amending of the High-ways, but with one Cart furnished. And another man dwelling in the same Town, and occupieth but 40 or fifty Acres, or not so much, and keepeth but three horses, and one draught or cart, and he likewise is usually charged, as the former, with one cart furnished; whether should their two charge for carriages for the High-ways be all alike? For mine own opinion, I thinke it both reasonable, and warranted by the words of the Statute, that he that for his own private businesse, shall usually make and set up two draughts or carts, shall also for the King and Countries Services, be chargeable with two draughts or carts, though he occupy all his Land but with one Plow.

2 Again, what a draught for carriage shall be, *ſc.* with how many horses? and whether he that keepeth but two horses and a cart (as many with us do) be chargeable or no? I find that a draught for the Kings carriages heretofore, hath beene sometimes with two horses, as it seemeth



meth by the Statute of *Magna Charta* cap. 21. (the words of the Statute be, No Sheriff, &c. shall take the horses or carts of any person, for carriage, except he pay for one cart with two horses, x. d. by the day, and for a cart with three horses, xiiij. d. by the day:) and therefore I should thinke him that usually goeth to cart (for his own businesse) with two horses, to be chargeable to finde a cart and two horses for the amending of the High-ways, and to carry such loads as his two horses are well able to draw.

3 Againe, if one occupieth a Plowland in pasture, viz. six or eight score Acres or more, of pasture for feeding of cattell, but keepeth neither Cart nor Plough, how shall he be charged to find a cart or draught, that keepeth none? and yet the words of the Statute, 2 & 3 *Phil. & Mary*, & 18 *Eliz.* 9. doe expressly charge him, See *hic antea* the words of these two Statutes.

4 Againe, he that shall keep a Draught for carriage, or a Plough, though he occupieth little or no land, or pasture in his own hands, but onely carteth or plougheth for other men, whether hee is not chargeable to finde a cart for the amending of the High-ways? It seemeth he is: But *quare* whether he be chargeable to find two able men with his cart, \* *ex* \* *P. 1.* except he hath in his occupation a Plowland: perhaps also hee keepeth never a man.

*There be also certain particular Statutes concerning High-ways, as followeth,*

**T**He Occupier of any Iron-works, for every three loads of coale, or One Ju-Mine, and also for every tun of Iron that he shall cause to be carried *stice*. in the Winter-time, by the space of one mile, in the High-ways within the Weilds of *Sussex, Surrey, or Kent*, shall pay to the Justice of Peace *32 El. 19. P. 19.* dwelling neere to the places in that County, where the High-ways shall be most annoyed, or to his Assignes, three shillings in money; the same (in default of payment) to be levied by distresse, by such Justice, or his Assignee, of the goods of the party in the said County.

Also such Occupier, for every 30 loads of Coal and Mine, and for every ten tuns of Iron carried in the said High-ways, &c. shall lay one load of synder, gravell, stone, or chalk; in places to be appointed by such Justice, or else within eight days after demand, shall pay *iiij. s.* for every such load, to the hands of such Justice, who upon default of payment, shall levy the same by distresse, &c.

The

P. 22:

The said Justice of Peace shall bestow all such sums of money upon the amending the same High-ways, at his discretion.

Two Ju-  
stices.

29 El. 19.

P. 22.

Two Justices of Peace (whereof one to be of the *Quorum*) which were present at the Sessions, wherein any person was convicted for any offence against the Statute of 39 *Eliz.* may make Warrant for levying the forfeits thereof, to any Constable or other Officer: and they may also appoint such ways and meanes as they shall think meet, to levy the double sums for not paying those forfeits within 20 days next after lawfull demand of the same by such Officer.

14 H 8 c. 6.

26 H. 8. c. 7

By the assent of two Justices of the Peace, and 12 discreet men of the Hundred and Hundreds adjoyning, any person may make and lay out, in and over his own land in Fee simple, in the Wield of *Kent*, as also in the County of *Sussex*, a new High-way more commodious then the old; and instead thereof may retain the ground of the old way in severalty to him and his heires: and the same Justices and 12 men, shall within three moneths certifie under their Seals, such new way, into the Chancery, *sc.* the length and breadth of the same new way, and other things adjoyning or concerning the same, according to their discretion.

See more of High-ways, *tit. Bridges.*

## Horse. C A P. 27.

\* *Lamb.* 205  
See the  
Statute.

**E**Very Justice of Peace (after sale made in open Faire or Market, of any stolne horse, &c.) at any time within six moneths next after the said \* sale, (or rather next after the felony done) may take and heare the claime, and proove of the right owner, (from whom the same was stolne, or of his Executors or Administrators, or other person by their appointment) which proove must be by two sufficient witnesses upon oath, to be made within forty dayes next ensuing such claime.

31 *Eliz. cap.* 12.

P *Faires* 8  
31 *H. 12.*

Also the same Justice of Peace may minister an oath to the party that bought the said horse, or that hath the possession and interest of the same horse, what money he paid for the same *bona fide*, so as the right owner repaying the same, may have his said horse again, *ibid.*

Note that in every Fair or Market, where any Horses, Geldings, Mares, or Colts, are to be sold, there ought yearly to be appointed out one certain and speciall open place, where the said horses, &c. shall be sold: And one sufficient person (or more) to take toll, who shall continue

in

in the said place, from the houre of ten before Noon, untill Sun-Setting, every day of the aforesaid Faire, 2 & 3 P. & M. cap. 7.

Also note, that every sale, or other putting away, in any Faire or Market, of any stolne horse, &c. not being according to the Statute in every point (sc. in every of these particulars following, as it seemeth) is void, to alter or take away the property of the owner, from whom such horse was stoln. *31 Eliz. P. 5 & 7.*

1 If the horse be not, in the time of the said Faire or Market between ten of the Clock and Sun-setting, one houre together (at the least) in the open place of the Faire, &c. where horses are commonly sold, 2 P. & M. the sale is void, &c.

2 If all the parties to the bargain (being in the Faire) shall not come together with the horse, to the Book-keeper, to the open place appointed, 2 P. & M. the sale is void, &c.

3 If the Book-keeper, Toll-taker, Bailiffe, or other chiefe Officer of the same Faire or Market, shall not take perfect knowledge of the seller, or of the voucher, *scilicet*, of their true Christian name, surname, mystery, and place of dwelling: Or shall not enter all the same into his Book, the sale is void, &c. *31 Eliz.*

4 If the voucher be not a sufficient and credible person: Or if the voucher shall not know the seller indeed, or shall not truly declare to the Book-keeper, &c. the Christian name, surname, mystery, and place of dwelling, as well of himselfe, as of the seller (as it seemeth) the sale is void, &c. *31 Eliz.*

5 If the Book-keeper, &c. shall not make entry into his Booke, of the true price, that the horse is so sold, with the colour and one speciall mark at the least, of the same horse, &c. 2 P. & M. *31 Eliz.*, the sale is void, &c.

6 So if a true and perfect note in writing, of the name of the seller, or voucher, and of their dwelling, &c. and of the price, be not given to the buyer, by the Book-keeper, &c. and subscribed with his hand.

7 And lastly, if toll be not paid where toll is due; or the Book-keeper not paid for the Entry, &c. *Vide 12. E. 4. fol. 8. Crompt. 91. Fi. 45.*

If the thief which stealeth an horse, shall sell the same horse in Market overt, or Faire by a false name, and that be so entred into the Toll-book; such mis-naming of the seller, maketh the sale void against the right owner of the horse. And this was the opinion of *Windham* and *Roads* Just. (upon this Stat. 2 & 3 P. & M.) *Anno 30 El.* in a Case between *Gibbs* Plaintiffe, against *Bassell*; the Case being thus: One *Potter* did



did steale the horse of the Plaintiff, and sold him to the Defendant in Market overt, by the name of *Lyster*, and so it was entred into the Toll-book, that *Lyster* sold the horse, whereas his name was *Potter*; whereupon *Gibbs* the Plaintiff brought his Action of the case *Sur trover*; against the Defendant *Bastell*, &c.

Note also, that every contract for any stolen horse, &c. made out of open Faires, is void, though they be after booked, *Dyer* 99.

Co 3. 78. 83.

7 H. 7. 12.

Also, a sale in a Fair or Market overt, shall not take away the owners property, where the buyer doth know that the property was to another man, or where the buyer knoweth that the horse, or other goods were stolen. See *posteatit. Restitution. cap. 3.*

Co 5 83.

Also to alter the property of a stranger having right, horses and all other goods, are to be sold in such a place or shop, as is commonly used for the selling of goods of the same kinde, or nature.

Also a sale upon a Sunday, though in a Faire or Market overt, shall not be a good sale to alter the property of the goods: by *Brian*, 12. E. 4. fol. 1. b.

And indeed, Fairs and Markets kept upon the Sabbath day, are prohibited by the Statute of 27 H. 6. cap. 5. And now by the Statutes, 1 El. cap. 2 & 3 Jac. cap. 4. All persons resorting upon the Sabbath day, to any Faire or Market, and by the meanes thereof absenting themselves from the Church, or not abiding at the Church orderly, during all the time of Prayer, Preaching, and other Divine Service, are to be punished by any one Justice of Peace, according to the forme of the said Statute, 3 Jac. (which see, *Hic posteatitulo Recusants*) or by the Ordinary or Bishop of the Diocese, by the Statute 1 El. Or otherwise the offender may be indicted (for such his absence from Church) at the Quarter Sessions of the Peace, or generall Gaol delivery.

Also the Lord of such a Fair or Market, kept upon the Sabbath day contrary to the Statute, may be therefore indicted for the King, either at the Assises and generall Gaol delivery, or at the Quarter Sessions of the Peace within that County, *Plus hic cap. 49.*

### Huy and Cry. C A P. 28.

**E**VERY Justice of Peace may cause Huy and Cry, fresh suit, and search to be made, upon any Murder, Robbery, Theft, or other Felony committed: and this he may do by force of the Commission, the first *Assignavimus Stat. Winch. 13 E. 1. cap. 1.*

Note

Note that all Huy and Cries ought to be made immediatly after the Felony done, from Town to Town, and from Countrey to Countrey, and by horsemen and footmen; otherwise it is no lawfull pursuit, 28 Ed. 3. <sup>13 E. 1. 1. 2</sup> <sup>27 Eliz. 13.</sup> <sup>P. 119.</sup>  
cap. 11.

Note also, when Huy and Cry is levied upon any robbery, or other felony, the Officer of the Town where the felony was done (or Huy and Cry first levied) ought to send to every other Town round about him, and not to one next Towne only: and in such cases it is needfull to give notice in writing (to the pursuers) of the things stolne, and of the colour and marks thereof; as also of the person of the Felon, his apparell and horse, &c. if it may be.

Sir Nicholas Hyde, in his charge at Cambridge Assises in Lent, 1629, delivered that Huy and Cry must be made or pursued with horsemen and footmen; and that not onely a private search is to be made in every Towne, but that they must raise the Countrey as they goe, and all still to follow the Huy and Cry, as against a Common enemy. *Plus hic,* cap. 109.

Also the Officers of every Towne to which Huy and Cry shall come, ought to search in all suspected houses and places within their limits: And as well the Officers, as all other persons which shall pursue the Huy and Cry, may attach and slay all such persons, as in their search, or pursuit, they shall finde to be suspicious; and thereupon shall carry them before some Justice of Peace of the Countrey where they are taken, to be examined where they were at the time when the felony was committed, &c.

See more of Huy and Cry in the title *Robbery and Felony*.

Hunting. CAP. 29.

**U**Pon information given to any Justice of Peace of the Countrey where any unlawful hunting of Deer or Conies (by night or with painted faces, or other disguising) in any Forrest, Park, or Warren, shall be had of any person suspected thereof; that Justice may make a Warrant to the Sheriff, Constable, Bailiff, or other Officers, to take the party, and to bring him before him, or before any other Justice of Peace of the same Countrey, who may examine him of that hunting, and of the doers thereof: And if he conceal that hunting, or any offender with him therein, then the same concealment shall be felony in such concealer. <sup>1 H. 7 c. 7.</sup> <sup>P. Inst. 16.</sup> <sup>Quere, if they kill</sup> <sup>nothing</sup>  
But if he then confesse the truth of all that he shall be examined of, and nothing

knoweth in that behalf; then his offence of hunting shall be but Trespasse, and finable: the fine to be assessed at the next generall Sessions of the Peace, by the Justices there. See *postea* tit. *Felony by Stat.*

Also to disobey such a Warrant, or to make *Rescous* hereupon, so that the execution of the same Warrant thereby be not had, it is Felony. *Vide ut supra.*

The Justice of Peace that shall take the examination of an offender for unlawfull hunting in Parks, &c. as aforesaid, may after such examination, binde the offender to his good behaviour, (as it seemeth) to the end he may be forth-coming till the offence, and residue of the offenders be fully examined: otherwise, if it shall after appeare, that the offender hath concealed any thing, whereby the offence becommeth Felony, then the offender perhaps will not be found.

Also, all such unlawfull hunting, if it be by three, or mo, will prove a Riot.

1 Jac. c. 27. *P. Poſants* 7. Whosoever shall have or keep any Grey-hound, or setting Dog (not having sufficient living according to this Statute;) or shall trace or course any Hare in the snow; or shall otherwise destroy, kill, or take any Hare; the said offences being proved, &c. before two Justices of Peace, the said offenders shall be by them committed to the Gaol, &c. *Vide tit. Partridges*, more fully hereof.

60 II 86, 37. And yet hunting and hawking, and such other pastimes, every man may use them upon his own lands at his pleasure, so far as they be not restrained by Act of Parliament. But no man may make a Park, or Warren within his own ground, without the Kings grant or licence; and therefore such Park or Warren (made without licence) seeme not to be within the Statute of 1 H. 7. 7. See *Br. Warren*, 1. 2. & *Co. L.* 233.

What a Parke is, and the difference betweene a Park, a Forreſt, and a Chase; and what be Beasts, or Fowles of Park, Chase, and Warren. *Vide Co. L.* 233.

There be divers other Statutes made against hunting, &c. which be very penall, but not to be dealt withall by the Justices of Peace, except at their generall Sessions: See more of them *hic postea* tit. *Bailment.* & *Stat. 3. Jac. Regis, hic antea* tit. *Guns.*

**A**Ny one Justice of Peace may joine with the Clerke of the Peace, in taking, the Inrolment of any Indenture of bargain and sale  
of



of lands, &c. lying in that County where he is Justice, and it is good.

Now the said Justice of Peace, and the Clerk of the Peace, are to take for the Inrolling of the same Deed indented in parchment, &c. these fees following, viz. where the lands exceed not the yearly value of 40 s. they are to take but ij. s. 8. xij. d. for the Justice, and xij. d. for the Clerk: And where the Lands exceed the yearly value of 40 s. there they are to take 5 s. 8. ij. s. vi. d. for the Justice, and ij. s. vi. d. for the Clerk. *Ibid.*

But such Deed (and all other Deeds to be inrolled according to this Statute) must be indented *revera*, and must be inrolled within six moneths after the date of the same Indenture: and if it have no date, then within six moneths after the delivery of the Deed, or if it be inrolled the very day of the Date of the Deed, or the very last day of the six moneths, it is sufficient.

Note, herein you must account 28 days to every moneth, and not above (sc. foure weeks to the moneth.)

Note also the difference, when a Statute accounteth by the year, half year, or quarter, and when by the moneth: for a year, half a year, or a quarter of a year, shall be accounted according to the Kalender, and by the days in the Kalender, and not after 28 days to the moneth. And a year, or a twelve-month (in the singular number) includes the whole year according to the Kalender. But twelve moneths (in the plural number) or eight moneths, or six \* moneths, &c. shall be accounted after 28 days to every moneth: for the moneth by the Common Law of England, is but eight and twenty days; And so

Whereas	{ three moneths,	{	84	{
	{ six moneths,	{ hath but	168	{ days.
	{ twelve moneths,	{	336	{
	{			
The	{ quarter of a year,	{	91	{
	{ half a year,	{ hath	182	{ days.
	{ year,	{	365	{

*Ter centum, ter viginti, cum quinque diebus,  
Sex horas, neque plus, integer Annus habet.*

*Dyer 345.]*

And as to these six houres, the Law giveth no regard to them; and yet these six houres every fourth year doe make a day, and so make the Leap-year: and this Leap-year containeth in it 366 days.

Note also for the year, that the *Julian* year (instituted by *Julius Caesar*) beginneth the first day of *January*, and so doth the Empire begin: the *Hebrews*, 1 *April*: the Church of *Rome* on their 25 of *December*: But in all matters Legall with us, the year beginneth not till the 25 day

Bible Im-  
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of *March*; and therefore when in an Indictment, or other Writing or Deed, it shall be set down (or the Writing shall be dated) *Anno Dom.* 1617, it must be accounted according to the computation of the Church of *England*, which beginneth the yeere upon the 25 day of *March*; upon which day our Saviour Christ Jesus arose from death, as it is holden, Doctor *Whites* Def. 151. and upon which day Christ was conceived in the Virgins wombe, (as some write (and so was borne in *December*; and then the yeer of our Lord must be accounted rather from his conception, and Incarnation, then his Nativity,) and upon which day the World was created, as it is holden by others: But I leave these things to such as have travelled in the searching out of Antiquities.

*Labourers.* CAP. 31.

One Ju-  
stice.  
5 *Elc* 4.  
P. 13.

**E**Very Justice of Peace, upon request, may cause all such Artificers and other persons as be meet to labour, (by his discretion) to work by the day in Hay-time, and Harvest-time, for the saving of corn and hay, and may upon their refusall imprison them in the Stocks by the space of two days and one night.

P. 11.

Any one Justice of Peace may give licence under his hand and seale, to such Labourers as passe in Hay-harvest, and Corn-harvest, from one Country to another to work.

Apprentice  
P. 24.

Any one Justice of Peace (upon complaint to him made) may compell any person meet, (in his discretion) to be bound as an Apprentice (with any one that shall require him) to Husbandry, or any other Art, &c. And upon their refusall may commit them to Ward, there to remain untill they will be bound to serve as an Apprentice should serve, according to this Statute.

P. 25.

If any Master shall misuse his Apprentice; or that the said Apprentice shall have just cause to complain; or if the Apprentice do not his duty to his Master, upon complaint thereof made by the Master, or Apprentice, being grieved, to any one Justice of Peace of the County where such Master dwelleth, the said Justice (by his discretion) shall take order between the said Master and his Apprentice: and for want of conformity in the Master, the said Justice may bind him to appeare at the next Sessions to be holden in the said County (where the Justices of Peace, or four of them, whereof one of them to be of the *Quorum*, if they shall think meet, may discharge the said Apprentice of his Apprentiship, and Indentures.) But if there shall be default in the Apprentice, the said Justices

Justices (at their said Sessions) may cause due correction to be ministered to him, as they shall think meet. Also it seemeth, that if the first Justice of Peace to whom complaint was made, shall find the default to be in the Apprentice, that then the said Justice of Peace may send him to the house of correction, as an idle or disorderly person, by the Statute 7 Jac. 7 Jac. 6. 4. cap. 4. and needeth not to trouble the Sessions with him, *tamen quare*. But from the Sessions they may send him, to the house of correction.

If an Apprentice shall steale or purloine any thing to the value of 12 pence, or above, from his Master, the Apprentice, together with those that inticed or perswaded him thereto, or that shall receive any of the same goods, knowing they were purloined; after due examination, and confession, or prooff thereof made before any Justice of Peace, He may send the Apprentice, as also the inticers, procurers, and receivers of those goods, to the Common Gaole, &c. But if the goods be under the value of 12 pence, it seemeth the Apprentice, together with the procurers, and receivers, may be sent to the house of correction, by the Justice of Peace, or rather by the Justices at their generall Sessions. *Vide hic cap. 101. & 102.*

Any one Justice of Peace may allow of the cause of putting away *P. 5, 6.* of a servant, or of the departure of a servant within his term.

But otherwise it is of an Apprentice, for an Apprentice cannot be discharged but by foure Justices of Peace at the least, and in open Sessions as aforesaid; or else by the agreement of the Master and the Apprentice, and under his Masters hand in writing. And yet one that is retained as *Br. 17 30. Plo. 259. Fitz 143. i.* an Apprentice, may be seised by his Lord as a Ward, by reason the Lords title is more ancient.

Any two Justices of Peace upon complaint to them made, that any Two Justices. servant (who is retained according to the Statute 5 El.) hath departed *ces. P. 6.* before the end of his terme (unless it be for some sufficient cause to be allowed by one Justice of Peace at the least;) or at the end of his term, without one Quarters warning given before two witnesses; or that any person, compellable by the Statute to serve in Husbandry, or in any other Science in the said Statute named, upon request made, hath refused to serve for the wages appointed (by Proclamation in that County, &c. according to this Statute;) or hath promised, or covenanted to serve; and doth not; according to the Tenour of the same; the said Justices may examine the matter, and if they shall finde such servant or person faulty therein, they may commit him to Ward, there to remaine without bail, untill he shall be bound to the party offended, to serve and continue with him for the wages limited according to this Statute, and then to be discharged without paying any fee to the Gaoler. *Add.*



And yet any one Justice of Peace (as it seemeth) may make his Warrant, to attach a servant departed out of Service, or refusing to serve, to be before the Justices at their Sessions, there to answer their defaults. See *postea* tit. *Warrants*, cap. 121.

Also it seemeth, that any one Justice of Peace may send such idle or disorderly servant to the house of correction, and that by the Statute of 7 *Inc. cap. 4.*

Who be  
compellable to serve  
5 *Eliz. 4.*  
P. 2.

Now by the Statute of 5 *El.* every person unmarried, and every other person (married) being under the age of thirty yeeres, having beene brought up in any of the Arts Sciences, or Trades in the Statute mentioned, is compellable to serve in any the said Trades, upon request made by any person using the same Trade; except such persons be lawfully retained with some other; or have xl. s. in land, &c. or xl. pound in goods, and so allowed by two Justices of Peace under their hands and seals; or have some Farme in tillage, whereupon to imploy themselves.

T 3.

P. *Just. 66*  
& *Lamb. 4.*

Also, every person between the age of twelve yeeres and three-score, (not being lawfully retained according to the Statute, nor being a Gentleman born, nor a Scholler; nor having means as aforesaid, nor heire parents living having x. li. in lands, or xl. li. in goods, and being their apparent) shall be compellable to serve in Husbandry by the yeere, upon request, &c. See more what persons be compellable to serve, *Hic postea.*

5 *Eliz. 4.*  
P. 4.

Any two Justices of Peace may imprison without baile, the Master for ten days, and the Servant, Workman, or Labourer, for 31 days, that shall give, or shall take, or receive excessive wages, *sc.* any greater wages, or other commodity, contrary to the rates or wages assessed by the Justices of Peace at their Easter generall Sessions, and Proclamation thereof made in that County.

Now concerning the wages of Servants, &c. The Justices of Peace (at their Easter Quarter Sessions) shall doe well to asseesse the wages in such manner, as that Servants, &c. may reasonably maintain themselves therewith: And that their Masters should in no wise exceed or give above such wages, by way of Contract: But yet Masters may reward a well deserving Servant, &c. (over and above his wages) according as he shall deserve; So that it be not by way of promise, or agreement, upon his Retainer. See the preamble of the Statute 5 *Eliz. 4.* that considering the advancement of prices of all things belonging to Servants and Labourers, if more reasonable wages and allowances be not given them then is limited by former Statutes, it would be too great a grief and burden to the poor hired Servant and Labourer.

Note

Note that every Retainer, promise, or payment of wages, or other thing whatsoever, contrary to the true meaning of this Statute, And every Writing and Bond made for that purpose shall be utterly void. *Ibid.*

Note also that by the Statute 5. *Eliz.* no person shall hire or retain a servant for lesse time then for one whole yeare. But this seemeth to extend to Artificers or Tradesmen, and only to such Trades as are named in this Statute, and not to Husbandry. *P. 1.*

The Arts and Trades mentioned in the Statute of 5. *Eliz.* are these following, *viz.* Arrow-head makers, Bakers, Brewers, Butchers, Bowyers, Cappers, Clothiers, Cloth-workers, Cookes, Cutlers, Curriers, Dyers, Ferrors, Felt-makers, Fletchers, Fullers, Glovers, Hat-makers, Hosiers, Millers, Pewterers, Sadlers, Sheete-men, Shoo-makers, Smiths, Spurriers, Taylers, Tanners, Tuckers, Turners, and Woollen cloth Weavers.

And yet no Retainer of any servant for lesse time then for one whole yeere is good, or according to Law. See *Fitz. 168. h. Co. L. 42. b.*

Any two Iustices of Peace of the County where the offence hereunder mentioned shall be committed, may imprison by the space of one yeare or lesse, by their discretions, any such servant, work-man, or Labourer, as shall wilfully make any assault or affray upon his Master, or upon any other having the charge or over-sight of him, or of his worke, the said offence being proved before the said Iustices by confession of the said servant, &c. or by the oath of two honest men. *P. 11; Assault his Master.*

And yet upon complaint thereof made to any one Iustice of Peace, that Iustice may bind the offender to his good behaviour, and so to the next Sessions, and there the offender may be convicted and punished according to the Statute.

Any two Iustices of Peace may compell any woman (being of the age of twelve yeeres, and under forty, and unmarried, and forth of service) whom they shall thinke meet to serve, to be retained in service, by the yeere, weeke, or day, for such wages, and in such sort as they shall think it meet. And if such woman shall refuse, they may commit her to ward, untill she shall be bound to serve as is aforesaid. *P. 14; Women.*

Any two Iustices of Peace may make a testimoniall to a Serving-man that is turned away from his Master, or whose Master is dead, 14. *Eliz. cap. 5. quere*, if this be still in force. *Lamb. 326.*

For Clothiers which will not pay their work-men such wages as shall be assessed by the Iustices at their Sessions, See the title of *Cloth.* *1. Jac. 6.*

The certificate which is to be made to the head Officer of any City or Three Ju-Towne corporate, where a child is to be bound Apprentice, (sc. that the father of such childe may dispend 40. s. per annum) must be under the hands *1. Jac. 6. 5. Eliz. 4. P. 17.*

hands and seales of three Iustices of the Peace of the Shire where the land lieth.

The reason of this Law seemeth to be, for that such as be to be bound Apprentices in Corporate Townes, &c. if their Parents be of a competent livelyhood, then their Masters shall not only be the better secured, &c. but such Apprentices also in likelyhood shall have the better meanes to set up their Trades after their time expired. And concerning such whose Parents have not forty shillings *per annum*, they are fitter to bee bound Apprentices to Husbandrie, &c. in the Countrey.

But concerning this certificate, it seemeth not much in use at this day: neither is this certificate so of the substance of the matter, or so materiall, that for want thereof the Indentures for the binding of such an Apprentice shall be void, (for the Iustices of Peace cannot be compelled to certifie &c.) but if the Parents have 40. s. *per annum*, it sufficeth: and so were the opinions of Sir *Hamprey Winch*, and Sir *William Jones*, in the Court of Common Pleas *Termine Pasch. anno 21. Jacobi Regis*. But Sir *Henry Hobart*, Lord chiefe Iustice of the Common Pleas, did not then deliver his opinion therein directly; yet he seemed to me to hold, That the Parents of such an Apprentice ought to have 40. s. *per annum*, and also ought to procure such a certificate from the Iustices of Peace.

Here I thinke it not amisse to set downe certaine Cases, some of them being by way of exposition of this Statute 5. *Eliz. cap. 4.* And other some at the Common Law, or grounded upon former Statutes, yet such as may give light and helpe to our Iustices of Peace in this businesse.

Co. II. 53. First, by the Common Law no man may be prohibited to worke in any lawfull Trade, for the Law abhorreth idlenesse, as the mother of all evill.

Co. II. 86. A man cannot be restrained to use the Trade of making Dice, Cards, Bowles, or the like, (except it be by Parliament) for all Trades which do avoid idlenesse, and exercise men in labour, for the maintenance of them and their families, and for to increase their substance, and to serve the King when need shall bee, are profitable for the Common-wealth, and therefore the restraining of them is against the Law, &c. Co. II. 86.

Co. II. 54. Also by the Common Law, no man is prohibited to use divers Mysteries or Trades at his pleasure; and although this was prohibited by the Statute of 37. *Ed. 3. cap. 6.* yet presently at the next Parliament (that restraint of free Trade being found prejudiciall to the Common-wealth) it was enacted againe, that all persons should be as free as they were at any time before the said Statute. Co. II. 54. See the Statute of 38. *Ed. 3. cap. 2.*



For that without an Act of Parliament, no man may be restrained in *ibid* any manner, either to worke in any lawfull Trade, or to use divers Mysteries, or Trades; therefore ordinances made to restrain any person therein, are against the Law: and yet ordinances made for the good order and government of Trades-men, &c. are good. *Co. ibid.*

Also it is lawfull for any person to use privately any Trade (as of a *ibid*, Cooke, Brewer, Baker, or Tayler, &c.) in his owne house, or in the house of any other, for the private use of the family, although such person were never Apprentice to the Trade. *Co. ibid.*

If any man use the Trade of Tallow-Chaundler, Baker, Brewer, or any other lawfull Trade, or manuell Occupation, for his owne use, or for the use of his family, without selling any for lucre and gaine, he may lawfully doe it. *Co. 8. 129, 130.*

And yet he which useth any Trade, or other manuell Occupation, for the use of himselfe, or of his family only (without selling) he cannot retaine any Apprentice within the Statute of 5. *Eliz. Co. 8. 129.* But hee may hire one to be his servant, who is skilfull in that Trade or Occupation.

One purchased a Mill, and hired a Miller to be his servant, who grownd the grists of his neighbours, and the wife of the owner of the Mill tooke money of the neighbours for their grists so grownd, and for this the husband (who was owner of the Mill) was indited at Cambridge Sumner Assises, *Anno Dom. 1619.* by reason that he was never himselfe Apprentice to the Trade: It was the case of *T. P. Yeoman.*

The intent of this Statute 5. *Eliz. cap. 4.* was that no person should take upon them any Art, Mystery, or Trade, &c. but such wherein they had skill and knowledge, according to the Rule, *Quod quisque novis, in hoc se exerceat. Co. 8. 130.*

And therefore none may keepe a common Brew-house, Bake-house, Cookes-shop &c. to sell to others, except they have beene Apprentice thereto by the space of seven yeeres, &c. *Ibid.*

Note that these words, Mystery, Trade, and Craft, doe all beare one sense or signification. See *Plö. 537. b. Co. 11. 34.* *Cromp. 285.*

Note next that this Statute, 5. *Eliz. cap. 4.* extendeth not to Serving-men but to servants in Husbandrie, and Handicrafts: And yet where the words of the Statute be, Servant generally, there it seemeth to extend to all. *Cromp. 184. P. 15.*

An Apprentice must be retained by Indenture, and by the name of an Apprentice expressly; or else he is no Apprentice though he be bound. Who are compellable to serve, See in this title before and after. *Who bee compellable to serve.*

*Fitz. 168. b.* Every Justice of Peace may command vagrant persons to prison, if they will not serve.

*Fitz. 167. a.* Every person who hath not sufficient lands to occupy, or live upon, nor other Art, is compellable to serve. See *Br. 14.*

*Fitz. 168. d. e.* If an infant, man or woman, of twelve yeeres of age, or a Gentleman, Chaplaine, Carpenter, or other person which is not compellable to serve, yet if they shall make a covenant to serve in Husbandry, they shall be bound by their covenant, and are punishable if they then shall depart, &c.

*7. H. 4. 5.* Yet by the common Law such a covenant or retainer of an Infant under twelve yeeres of age was void, they neither having ability of body, nor yeeres to consent, for an Infant (by the Common Law) is not of age to bind it selfe by covenant, *ante annos nobiles*, which is 12. yeeres in a woman, and 14. yeeres in a man-child, *Co. 7. 43. & 9. 72.* Neither before that age are they accounted, *potens in corpore*, which were the words used in the Statute made 23. *E. 3.* though those words are now left out of the Statute 5. *Eliz.* And thereupon *Markham*, in 21. *H. 6.* and 21. *H. 6. 32.* *Br. 30.* *M. Br.* abridging that case, seemes to hold 14. yeeres to be the age for retainer of an Infant, but there the case was of a man-childe that was retained.

*P. 15. 23.* But now by the Statute 5. *El. cap. 4.* any person above the age of ten yeeres, by their owne consent and agreement, may by Indenture bee bound as an Apprentice to Husbandrie, or any other Trade or Art.

*P. 3. 14. 23.* Also one of twelve yeeres of age by the same Statute is compellable by the Justice to serve in Husbandry: so also it seemeth of other Trades, Arts, or Occupations.

Such children whose parents are not able to maintaine them, though they be under twelve, yea if they be but above seven, yet may they be bound Apprentices by the Overseers of the poore, with the assent of any two Justices of Peace, by the Statute of 43. *El. cap. 2.* See *postea tit. poore.*

*12. R. 2. 5.* If a childe use Husbandrie till the age of twelve yeeres, and after be made an Apprentice to any Mysterie, his covenant shall bee voide: but this Statute of *R. 2.* seemeth to be repealed by the generall words of 5. *El. 4.*

And now though such child hath used Husbandry till his age of 12. yeeres, yet if he be not bound as an Apprentice to Husbandrie, (and that his parents be not able to maintaine him) then it seemeth that the overseers for the poore, by the assent of the Justices, may binde as an Apprentice such a childe, according to the Statute 43. *Eliz. cap. 2.* and that by

by force of the said Statute, *P. tit. Poore 2. 5.* And any person to whom the Overseers shall so binde such an Apprentice, may take and keep him as his Apprentice, &c. *1. Jac. 25. & 21. Jac. 28.*

If a woman who is a servant, shall marry, yet she must serve out her time, and her Husband cannot take her out of her M. service. *2. H. 4. fo. 13 Br. 18.*

A married man and his wife do bind themselves to serve, they shall be compelled to serve according to their covenant or agreement, *Fitz. 168.*

But a man that holdeth land of his Lord, to doe certaine dayes works yearly, shall not be compelled to serve. *40. E. 3. 39. Crompt. 185.*

A servant may be compelled to serve in Summer in the place where he served in the Winter before: But this seemeth to have beene only by force of the statute made *Anno 25. E. 3. cap. 2.* which statute now standeth repealed by the statute made *5. Eliz. cap. 4.*

If a man who is not able nor sufficient to keepe a servant, shall retaine a servant, such retainer is void, *Br. 25.*

What retainer is good. *Fitz. 168. b.*

If a man retaineth a Labourer or servant, to serve him according to the statute, though no wages be spoken of upon the retainer, yet the retainer is good, and they shall have such wages as is assessed and appointed by Proclamation, for that wages is certaine. See to this purpose, the Booke, *3. H. 6. fol. 23. Br. 1.*

If a man retaineth another, except the retainer bee according to the Statute, it seemeth to be void; without it be by Indenture, and then being by Deed, he is bound by his Covenant. See *Fitz. N. B. 168. f.*

Reteiner upon condition, seemeth to be a good Reteiner. See *11. H. 4. 42. Br. 23.*

A man retaineth a servant to serve him, generally, not expressing in what office, or in what businesse (as to say to serve him in Husbandry, or in the office of a Cooke, Butler, or Horse-keeper, &c.) yet such Reteiner seemeth to be good. *21. H. 6. 9. Br. Labor. 29.*

A man is retained to serve during his life, it seemeth a good Reteiner *Br. 44. 2. H. 4. fol. 15.* And so for three years or moe. *Fitz. 168.*

A man is retained for one yeare, to serve at any time when he shall be thereto required; this is no good Reteiner. See *22. H. 6. 30. Br. 31.*

Reteiner of a servant generally without expressing any certain terme, shall be for one yeare (in construction of Law) for that Reteiner is according to Law. *Fitz. 169. b. P. 1. Co L. 42. b.*

A. retaineth a servant for forty dayes, and after B. retaineth the same servant for one yeare: The first retainer by A. is defeated and become void. *Br. 51. See 11. H. 6. 1. Br. 49.*

If a servant, who is retained, shall depart out of his service, and wander, *Fitz. 169. b.*



P. 8.

der, he may be compelled to serve another man; but yet the first Master may take him away againe: See *Br. Notice* 2, 4. And besides it is safe to get the consent of his first Master, for now by the Statute 5. *Eliz. c. 4.* the master reteining a servant that is departed out of service, without shewing before his Reteiner, a testimoniall, shall forfeit v. li.

A man that reteineth a servant, ought to take notice of every former Reteiner within the same Countie; otherwise it is of a Reteiner in another Countie, 17. *E. 4. fol. 7. Br. Notice* 20.

*Fitz* 168 b.  
*Br.* 17 39 33  
*Dr. St.* 149.

And yet Master *Fitzb.* opinion was, That if one reteineth another mans servant (generally) not knowing that he was another mans hired servant, he was not punishable therefore, except he should deteine him after notice thereof; but now the Master may and must take notice whether he hath a testimoniall or no (as it seemeth.)

Departure  
of a servant  
*Fitz* 168 d.

If one taketh an Infant, or other servant out of another mans service, this is punishable, though the Infant or servant was not reteined; but if an Infant being reteined as an Apprentice or servant, fall to be a Ward, the Lord may take him from his Master, for the Lords title is more ancient: yet here it seemeth the Lord ought first to give notice thereof to his Master, 50. *E. 3. 22. Br. Labor.* 17. See *Br. Notice* 2. 4.

*Fitz* 143 j.  
*Plo* 259.

Note, that by the Reteiner, the servant is in service presently by Law, although he commeth not into his Masters service indeed, 41. *E. 3. 20. 46. E. 3. 4. 47. E. 3. 14. Br. 9. 11.*

*Fitz* 168 p.

If a servant shall depart from his Master, his master may take him againe, and reteine and keepe him whether he will or no. See the title, *Suretie for the peace.* And the Constable may tak and bring such Servant to his Master againe, *Fitz. Labor.* 56.

19 H. 6 30  
*Br.* 37.

The Master cannot discharge his servant, during his terme, &c. without the agreement of the servant; And now by the Statute 5. *Eliz. 4.* it must be for some reasonable cause, to be allowed by one Justice of peace at least, &c. *Vide P. 5.* otherwise the Master shall forfeit xl. s. *Tamen quare;* for where the departure or putting away of the servant is by the joynt consent of the Master and of the servant, such putting away or departure, seemeth not to be within the Statute of 5. *El.* neither is the allowance of the Justice of Peace requisite or needfull therein.

6. E. 4. 2.  
2 E. 6. 33.

*Br.* 30 38.

6. E. 4. 2.

*Br.* 38.

10 H. 6. 33.

*Br.* 38.

The Master may discharge his servant by word; but an Apprentice cannot be discharged by his Master, except it be by writing: for that an Apprentice cannot be but by writing.

If a servant shall be put away by his Master, yet he shall have his wages for the time he served. And yet in this case if the servant agree thereto, the servant shall have no Action to recover any part of his wages,

ges, but must crave the helpe of the Justice of Peace herein : but if such servant be within age, it seemeth such agreement shall not prejudice the servant.

But if a servant of his own accord shall depart from his Master before his time expired, he shall lose all his wages. 10 Ed. 4. 2.  
49. H. 6. 19.  
Br. 40.  
Apporc. 26.

If a servant be retained according to the Statute, and the Master dyeth, his Executors shall be chargeable to pay such servant his wages. Otherwise it is, where the retainer was not according to the Statute, except it were by Indenture. See 2. H. 4. 15. Br. Lab. 44. & Fitz. Nat. Br. 168. f.

An infant of five yeeres of age, or other person which is not *potens in corpore*, yet if they shall be retained, and shall serve indeed, their Master must pay them their wages. See 38. H. 6. 22. Br. Lab. 46. & Ley Gager 67.

If a servant retained for a yeere, happen within the time of his service to fall sick, or to be hurt or lamed, or otherwise to become *non potens in corpore*, by the act of God, or in doing his Masters business, yet it seemeth the Master must not therefore put such servant away, nor abate any part of his wages for such time.

If a servant shall refuse to doe his service, this is a departure in law, although he stay still with his Master. 3. H. 6. 37.

If the Master shall detaine from his servant his wages, meate, or drinke; this is a good cause of departure : But yet this cause is now by the Statute of 5. Eliz. to be allowed of by the Justice of Peace, before the servant may lawfully or safely depart. Fitz. 168. l.  
Br. 51.  
p. 6.

So if the Master shall licence his servant to depart, or if the Master or wife of the Master shall beat the servant, these were good causes for the servant to depart, before the Statute 5. Eliz. 4. but now the allowance of the Justice of Peace is requisite as aforesaid. And yet more, that the Master by law is allowed, with moderation to chastise his servant or Apprentice, See 33. H. 8. cap. 12. and in the title, *Servetie for the peace*. Fitz. 168.  
l. 9. Br. 51.  
p. 6.

But now that by the Statute of 5. Eliz. the causes of putting away and departing of servants are referred to the consideration and allowance of the Justices of Peace; it becometh them to have good care, lest by their giving too much way therein, either to the Master or servant, many which might by due ordering have proved good servants, turne Rogues and Vagabonds.

No person (retained in Husbandry, or in any the Arts or Sciences, mentioned in the Statute of 5. Eliz. cap. 4.) after his retainer expired, may depart out of one Limit, Towne, or Parish, into another, without a testimoniall,

testimoniall under the scale of the Officer of the Towne where hee last served,&c. Neither may any person take into his service any servant so departing, without shewing such testimoniall; upon paine that every person retaining any such servant without such testimoniall, shall forfeit 5.li. being thereof convicted; upon inditement taken in the Sessions of the Peace,&c. and upon paine that every servant so departing without such testimoniall, shall be imprisoned untill he procure a testimoniall, the which if he cannot doe within the space of twenty one dayes next after the first day of his imprisonment, then he is to be whipped and used as a vagabond: and so if hee be taken with any counterfeit or forged testimoniall. 5. *Eliz. cap. 4. P. 7, 8.*

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London. CAP. 32.

**N**O new buildings shall be erected for habitation, within three miles of *London*; nor any building shall be divided or converted to severall habitations there, except such houses shall be fit for the dwelling of such a person as heretofore hath beene assessed to the Subsidie of v. li. in goods, or iii. li. in lands, at the assessment next before the said building or division, or as shall bee adjudged by the two next Justices of Peace (by writing under their hands and scales, to be presented at the next Quarter Sessions) to be fit and able to be so assessed in the Subsidie, 35. *El. 6.*

The two next Justices of Peace have power to decide and determine of the sufficiencie and conveniencie of such houses, and of the sufficiencie of the inhabitants therein, *Ibid.*

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Mauls. CAP. 33.

One Justice  
2. *Ed. 6. 10.*  
27. *El. 14.*  
1. *Jac. 25.*  
P. 4.

**T**He Constables or Bailiffe of any Town, where any deceitfull Mauls shall be made or mingled, to be sold contrary to the Statute 2. *Ed. 6.* may from time to time view and search all such Mauls, as shall be made or put to sale within any of their Townes; and if thereupon they shall find any Maul put to sale, being evill made, or mingled with evill Maul, contrary to this Statute; then the said Constable or Bailiffe, so finding any such deceitfull Maul, with the advice of any one Justice of Peace, may cause the same to be sold to such persons, and at such reasonable prices, as to the discretion of the same Justice shall seem expedient, 21. *Jac. cap. 28. & 3. Car. 4.*

These deceitfull Mauls be of three sorts, *sc.* such as be not well made; or not well dressed; Or mixed: As,

1. First,



1 First, if any Barley-Mault shall be made (in the moneths of June, July, and August onely excepted) if the same Mault shall not have in the making thereof (*sc.* in the fat, floore, steeping, and drying thereof) three weekes at the least: and in the months of June, July, and August, seven-teeene dayes at the least. For under such times the mault cannot be well made, nor wholesome for mans body: and Maults not sufficiently dryed cannot be kept long, but will be mustie and full of weevils.

2 Secondly, if any Maults shall be put to sale which be not well trodden, rubbed, and well fanned.

3 Thirdly, if any Maults be mingled, *sc.* Maults not well made as aforesaid, or made of Mow-burnt or spired Barley, and mixed with good Maults, and so put to sale.

The Justices of Peace at their Quarter Sessions (or the more part of them) at all times may suppress and discharge, or restraints the number of Maulters; and also may restraints such persons as they shall thinke meet, for buying Barley to convert to Mault. And if any person shall refuse, disobey, or not performe such suppressing, discharge, or restraint or any other order which the said Justices in their Sessions shall set down touching the same; then, and so often such person, being thereof duly convicted before the Justices at their Quarter Sessions, or before any two Justices of Peace out of their Sessions (by his owne confession, or by two witnesses) shall be by the said Justices committed to the common Gaole, there to remaine without baile for three dayes, and after that untill hee shall become bound by Recognizance in forty pounds to the Kings use, before some one Justice of Peace, to performe and obey such order, suppressing, discharge, or restraint. So that any two Justices of Peace may convict such offenders (upon their confession, or by two witnesses) and then may commit them, as aforesaid: and after, any one Justice of Peace may take such Recognizance, as aforesaid.

Two Justices.  
39. Eliz. 16.  
p. 6.

Lamb. 336.

One Justice.  
ff. c.

### Mariners. CAP. 34.

**N**O Fisherman using the Sea shall bee taken to serve as a Mariner by the Kings Commission, but by the choice of two Justices of Peace next adjoyning to the place where he is taken.

5. Eliz. 5.  
p. 8.

See more for Mariners *atrol*: *Rogue*, and *Souldier*.

## Night-walkers. CAP. 35.

Lamb. 46.

131.

13. H. 7. 10.

See tit.

watch.

**E**Very Justice of Peace (*ex officio*, and by the Commission, the first *Assignavimus*) may cause to be arrested all Night-walkers; bee they strangers or other persons that be suspected, or that be of evill behaviour, or of evill fame: and more particularly all such suspected persons as shall sleepe in the day time, and goe abroad in the nights; And all such as shall in the night season haunt any house that is suspected for bawderie; Or shall in the night time use other suspicious company; Or shall commit any other outrages or misdemeanours; and may force them to finde surety for their good behaviour. See the title, *Suretie for the good behaviour*, cap. 75.

Psal. 104.

For as one saith, such Night-walkers (or night-birds) are ominous, like the whistler, &c. and such night-walkings are unfit for honest men, and more suting to the Theefe (the right Whistler,) and to beasts of the prey, which come forth of their dens, when man goes to his rest.

## Oath. CAP. 36.

One Ju-  
stice.

Lamb. 190.

**A**Ny one Justice of Peace may compell such as are betweene the age of fifteene yeers and threescore, to be sworne to keepe the Peace. See the Statute of *Winchest.* 13. E. cap. 1. 6. And the Articles of Inquisition upon the said Statute of *Winchest.* made about *Anno* 34. E. 1.

7. Jac. 6.

Any two Justices of the Peace (the one being of the *Quorum*) may require any person of the age of eightene yeeres or above (under the degree of a Baron or Baronesse) to take the oath of allegiance, and upon their refusall may commit them to the common Gaole, there to remain without baile till the next Assises, or Quarter Sessions.

Two Justices, &c. may take the oaths of the undet-Sheriffes, and their Officers, &c. See the title *Sheriffes*.

## Partridges. CAP. 37.

23. El. 10.

P. Fefants 2.

P. Inst. 38.

**E**Very Justice of Peace (by the Statute of 23. *Eliz.*) may examine all Offences, for the destroying or taking of Partridges or Fefants in the night time; and for hawking or hunting with Spaniels, in any eared or codded corne and may binde by Recognizance the offenders with good Sureties to appeare at the next generall Sessions of the Peace to answer their said offences, &c.

Two Ju-  
stices.

But now by the Statutes made 1. *Jac.* 37. & 7. *Jac.* 11. the offences

of destroying, &c. of Partridges and Fesants (generally) is referred to two Justices of Peace, to examine, heare, and determine out of Sessions. *Vide hic infra.*

Also after the conviction of any such offender (according to the Statute of 23. Eliz.) for taking or destroying any Partridges or Fesants in the night time, any one Justice of Peace of that County, may bind such offenders with good sureties, that (for the space of two yeeres) they shall not take or destroy any Partridges or Fesants contrary to that Statute.

1 By the Statute made 1. Jac. Every person which shall shoot at, kill, or destroy (with any gun or bow) any Partridge, Fesant, House dove, Pigeon, Hearne, Mallard, Ducke, Teale, or any such Fowle, or any Hare: 1. Jac. 27.  
P. Fesants.  
6. 7.

2 Or shall take, kill, or destroy any Partridge, Fesant, House-dove, or Pigeon, with setting dogs and nets, or with any manner of nets, snares, engines, or instruments. 21. Jac. 28.  
3 Car. 4.

3 Or shall take out of their nests, or willingly destroy, or break in the nest, the egges of any Fesant; Partridge, or Swan:

4 Or shall trace or course any Hare in the snow:

5 Or shall at any time take, or destroy any Hare with cords, or any such instruments:

6 Or shall have or keepe any Greyhound for Deare, or Hare, or setting Dog or Net, to take Fesants or Partridges (except they have lands &c. of inheritance of the cleere yeerely value of x. li. or xxx. li. per annum for life, or goods worth 200. li. or be the sonne of a Knight, or of some person of heigher degree, or the sonne and heire apparent of an Esquire) the said offences being proved by the confession of the party, or by the oath of two sufficient witnesses, before any two Justices of Peace (of the County where the offence shall be committed, or the offender apprehended) shall by the said Justices (for every such offence) be committed to the common Gaole for three moneths, without baile, unlesse the said offender shall forthwith upon the said conviction, pay to the use of the poore there, xx. s. for every Hare, Fowle, and Egge, so taken or destroyed; and forty shillings for having such Greyhound, setting Dog; or Net; Or after one moneth after his commitment, become bound by recognizance with two sufficient Sureties in xx. li. a peece with condition not to offend thereafter, in any the particulars aforesaid. Which said Recognizance shall be taken by any two Justices of Peace of the County where the offender is imprisoned, and by them shall be returned to their then next Quarter Sessions. 1. Jac. 27.

Also it may seeme by the generall words of the Statute, that any two



Justices of Peace may in like manner proceed to examine and punish the offences of selling, or buying to sell againe, any Deere, Hare, Partridge, or Fesant, contrary to this Statute; for the words of the Statute be, That any two Justices of Peace, or more together, out of any Sessions, may examine, heare, and determine all offences against this Statute made *1. Jac. Regis*, and may performe every other thing requisite for the due execution thereof.

7. Jac. 11.  
21. Jac. 28.

By the Statute made *7. Jac. Regis*, every person which shall take, kill or destroy any Fesant, or Partridge, with setting Dogs, and Nets, or with any manner of Nets, Snares, or Engines (it being proved by the confession of the party, or by the oath of one sufficient witness before any two Justices of Peace) shall by the said Justices be committed for three moneths without baile; unless the said offender shall forthwith pay to the use of the poore there, xx. s. for every such Fesant, and Partridge: And further, to become bound by Recognizance in the summe of xx. li. never to take, kill, or destroy any Fesant, or Partridge any more; which Recognizance shall be taken by any one Justice of Peace of the Countie where the offence shall be committed, and shall be returned to the next Quarter Sessions.

7. Jac. 11.  
21. Jac. 28.

Every person which shall hawke at, kill, or destroy any Fesant, or Partridge, with any kind of Hawke, or Dog, (by colour of hawking) betweene the first of July, and the last day of August, (the same being proved by the confession of the party, or by the oath of two sufficient witnesses, before any two Justices of Peace of the County where the offence was committed, or the offender apprehended) shall by the said Justices be committed to the common Gaole, there to remaine for one moneth without baile; unless the said offender shall forthwith upon the said conviction, pay to the use of the poore there (where the offence shall be committed, or the party apprehended) 40. s. for every such hawking at Fesant or Partridge, and xx. s. for every Fesant or Partridge, which any, and every such offender by himselfe, his Hawke, or Dog, shall take, kill, or destroy, contrary to the intent of this Statute.

7. Jac. 11.

But no offender punished by vertue of this Law, shall be punished by vertue of any other Law, for the same offence. Also such offences must be complained of to the Justices of peace, within fixe moneths after the offence.

7. Jac. 11.

Any two Justices of Peace may make their warrant under their hands to any Constable, to enter into, & search the houses of any person (other then of such as have free warren, or are Lords of any Mannour, or have Free-hold of xl. li. by the yeere, or more, of some estate of inheritance,

or have fourescore pounds by the yeare for terme of life, or be worth in goods 400.li.) being suspected to have any setting-dogs, or any manner of nets, for the taking of Fesants and Partridges: And wheresoever they shall find any such dog or nets, the same to take, carry away, detaine, kill, destroy, and cut in peeces.

By the same Statute 7. *Iac. cap. 11.* every such person as hath free Warren, or is Lord of a Mannour, or hath other estate as aforesaid, is allowed (on their owne free Warren, Mannour, or Free-hold) to take Fesants and Partridges in the day time onely, and betweene Michaelmas and Christmas.

Peace. CAP. 38.

**E**VERY Justice of Peace hath authority and power given him (by the first *Assignavit*, or clause in the Commission) to keepe and cause to be kept the Kings Majesties peace; by force of which words they have as well the ancient power touching the keeping of the Peace, which the ancient Conservators of the Peace had by the Common Law; as also all authority which the Statutes since have added thereto: And so they may cause to be kept all the Statutes and Laws now in force; which have been made for the Peace, or keeping thereof: and more especially they may arrest, or cause to be arrested, and sent to the Gaole, all murtherers, robbers, and felons, and all persons suspected of such things.

*Lamb. 46.*

They may also suppress, and bind to the Peace, or good behaviour, all Affrayors, and all persons unlawfully and riotously assembled, or unlawfully wearing armour, or any weapons, by night or by day, or otherwise putting the people in feare, and all unlawfull night-walkers, and the like: All which may well be said to be disturbances or breaches of the Peace. See more for these under their particular titles.

If any Affray, Forcible Entry, or other thing in disturbance of the Peace be made or committed in the presence, or within the view of a Justice of Peace, he hath power to record it, and to certifie the same, and also to commit the parties to ward, presently upon the fact done: But if there bee any meanes, space, or time, then hee cannot commit them to ward, but he may record the same, and may (at any time after) make his Warrant to take them, and binde them with Sureties, to their good behaviour, and for want of Sureties may send them to the Gaole. *Cra. 41. per Curiam.*

If the Justice of Peace shall certifie into the Kings Bench, that *J.S.* hath broken the Peace in his presence, upon this certificate *J.S.* shall bee

there fined, without allowing him any Traverse thereto. *Marr. Lect. 3.*  
*Cromp. 132.*

Plague. CAP. 39.

One Justice  
 1. lac 31.  
 P. 4.  
 21. lac. 28.

**I**F any person infected, or being, or dwelling in an house infected with the plague, shall be by any Justice of Peace (or other Officer) commanded to keepe his house, and notwithstanding shall wilfully goe abroad, and converse in company, having any infectious sore upon him, it is felonie: and if such person shall not have such sore about him, yet for his said offence he shall be punished as a Vagabond (by the appointment of any Justice of Peace, as it seemeth) and further shall be bound to his good behaviour, for one whole yeare.

P. 5.

It shall be lawfull for the Justices, or any one Justice of Peace (and other head Officers in Corporate Townes) within their severall limits, to appoint Searchers, Watch-men, Examiners, Keepers, and Buriers, for the persons and places infected: and to minister to them oaths, for the performance of their said severall offices: and to give them other directions, as to them shall seeme good, see *Cromp. 122. b.*

If any person infected, or dwelling, or being in an house infected, shall contrary to the comandement or appointment of the Justice of Peace (or other Officer) wilfully attempt to goe abroad, or to resist such their Keepers or Watch-men, then may such Watch-men with violence enforce them to keepe their houses, &c. *Ibidem.*

Two Ju-  
 stices.  
 P. 1.

Any two Justices of Peace (or any two head Officers) of any Citie, Borough, Towne corporate, and Place privileged, may tax all and every Inhabitant, and all houses of habitation, lands, tenements, and hereditaments, within the said Citie or Borough, &c. or the liberties thereof (at such reasonable taxes, as they shall thinke fit) for the reasonable releefe of such persons as are infected, or inhabiting in houses infected in the same City, &c. And may levy the said taxes (by distresse and sale of the goods of every person refusing, or neglecting to pay the said taxes) by warrant under the hands and seales of two such Justices, or head Officers, to be directed to any person or persons, for the execution thereof: and in default of such distresse, and that refusall be made of payment, upon returne thereof, the said Justice (or Officers) by like Warrant may commit such person to the Gaole, there to remaine without baile, untill he shall satisfie the same taxation, and the arrearages.

P. 2

If the Inhabitants of any such City, &c. are unable to releev their infected persons, &c. upon certificate thereof by the head Officer, and o-  
 ther



ther Justices of Peace of such Citie, &c. or by any two of them, to any two Justices of Peace of the Countie of, or neere to the said Citie, &c. so infected; Any two Justices of or neere the said Countie, may tax the inhabitants of the Countie within five miles of the said place infected, at such reasonable weekly rates as they shall thinke fit, to bee levied by Warrant from any two such Justices of Peace, of or neere the said Countie, by distresse and sale of goods, and in default thereof, by imprisonment of the body of the party taxed as aforesaid.

If any such infection shall bee in any Borough or Towne corporate, <sup>P.3.</sup> where there are no Justices of Peace, or within a Village within any Countie; then any two Justices of Peace of the same Countie wherein the said place infected shal be, may tax the inhabitants of the said Countie, within five miles of the said place infected, at such reasonable weekly rates, as they shall thinke fit, for the releefe of the said places infected, to be levied by distresse and sale of goods (upon Warrant from the said Justices of Peace of the same Countie) and in default thereof by imprisonment, as aforesaid.

All such taxes made by the Justices of the County, for the releefe of <sup>P.3.</sup> such City, &c. shall be disposed by the said Justices of the said Countie, and as they shall thinke fit (where there are no Justices of Peace in such Citie, &c.) And where there are Justices of Peace, then in such sort as the head Officer and Justices of Peace there, or any two of them shall thinke fit.

All such taxes made either in Citie, &c. or Countie, shall by the said <sup>P.3.</sup> Justices that taxed them, (as it seemeth) be certified at their next Quarter Sessions to be holden within such Citie, &c. or Countie, respectively, there to be continued, enlarged, extended to other parts of the Countie, or determined, as the said Sessions shall be thought fit.

But no Justice of Peace shall doe or execute any thing before mention- <sup>P.6.</sup> ed, within either of the Universities of *Cambridge* or *Oxford*, or within any Cathedrall Church, or the liberties thereof, or within the Colleges of *Eaton* or *Winchester*; but the Vice-Chancellour of the Universitie, Bishop, and Deane of such Church, and Provost or Warden of the said Colledges shall doe and execute all things above mentioned, within their severall Precincts.

**A**Ny one of those Justices of Peace who may appoint Overseers for <sup>One Justice</sup> the poore, may also send to the House of correction, or common <sup>P.4</sup> Gaole, <sup>41. Eliz. 2.</sup>

Gaole, such as will not imploy themselves in worke, being thereunto appointed by the Overseers, according to the Statute 21 *Iac. cap. 28.*

Two Justices.

43. *Eliz. 2.*  
P. 2.

Two (or more) Justices of Peace, whereof one to be of the *Quorum*, dwelling in or neere the Parish or division, &c. shall yearly within one moneth after Easter, under their hands and seales, appoint foure; three, or two substantiall Housholders in every Parish, to be Overseers of the poore within the same Parish, who shall joyne with the Church-wardens therein. 21. *Iac. cap. 28.*

The Justices of Peace which have the appointing of these Overseers, must therein be carefull to chuse such men as in every Town are fittest: *sc.* substantiall persons; having competencie of wealth, wisdom, and a good conscience. And indeed, this name and office of Overseers, may beseme the best, and not the meanest men (it being a name and office of great antiquitie and excellency, as you may see 1 *Cor. 23. 4.* *Acts 20. 28.* & *Acts 6. 3. 5.*) And though the persons are dignified according to the singularity of the subject; yet this is not the least office to bee called Overseers of the poore. For as God himselfe hath a speciall respect to the miseries of the poore; so they be like God which provide for the necessities of the poore.

The Overseers dutie.

These Overseers and Church-wardens (or the greater part of them) with the consent of two or more such Justices, shall take order from time to time, for setting their poore on worke, putting out Apprentices, and releeving their impotent, as followeth:

Apprentices.  
P. 2. 5.

1 First, for setting to worke the children of all such, whose Parents shall not by the greater part of the said Overseers bee thought able to keep and maintaine their children; which children they, or the greater part of them, by the assent of two such Justices, may also put out to bee Apprentices, *sc.* the men-children till their age of 24, and the women-children till their age of 21. yeares, or the time of their marriage.

And all poore children so bound Apprentices, may be taken and kept as Apprentices by their Masters, any former Statute to the contrary notwithstanding. See 1 *Iac. cap. 25.* & 21. *Iac. 28.* & 3. *Car. 4.* but such binding must be by Indenture. See *antea tit. Labourers, Cromp. 184. b.* And see the forme of such an Indenture, *hic postea, cap. 128.*

Able persons.

2 For setting to worke all such persons (married or unmarried) as, having no meanes to maintaine them, use no ordinary and daily trade of life, to get their living by.

Such also as can get no worke, are by the Overseers to be set on work. And any one Justice of Peace may send to the house of correction, or Common Gaole, such as shall not imploy themselves to worke, being appointed

appointed thereto by the Church-wardens and Overseers of the poore of the Parish. 43 *Eliz. cap. 2.*

Now the placing of such Apprentices, and the setting and holding the poore to work, is the more proper and true duty of Overseers: for otherwise their bare gathering, or raising of a stock is to little purpose.

And note, that the Churchwardens and Overseers of the poore, may by and with the consent of two or more Justices of Peace (whereof one to be of the *Quorum*) &c. set up, use, and occupy any Trade, Mystry, or Occupation, only for the setting on work, and better relief of the poore of the Parish, Town, or place, where they are Overseers, &c. 3 *Car. c. 4.*

3 For relieving such poore amongst them as are poore and impotent, Impotent, or not able to work.

But this relieving of poore, and impotent persons must be such, as that they neither be forced to beg, or steal; nor so little as that it may be a lingering death to them.

And to these purposes the said Overseers are enabled to raise weekly, 43 *Eliz. c. 2.* or otherwise (by taxation of every inhabitant, Parson, Vicar, and other, and of every Occupier of lands, houses, tythes, mines, or saleable underwoods) proportioning them to an annuall benefit, &c.) in the same Parish, such competent sums of money as they shall think fit, therewith to provide a convenient stock of some ware or stuff, to set the poor on work; and also competent sums of money towards the necessary relieve of their lame, impotent, old, blinde, and other poore not able to work: and for the putting out of such children (as aforesaid) to be Apprentices.

The office then of these Overseers consisteth principally in two things.

1 In taxing contributions of money for the relief of the poor.

2 In the disposing thereof according to Law and good discretion.

And in these taxations there must consideration be had, first to equality, and then to Estates.

Equality, that men be equally rated with their neighbours, and according to an equall proportion.

Estates, that men be rated according to their estates of goods known, or according to their known yearly value of their Lands, Farms, or occupings; and not by estimation, supposition, or report. Also herein the charge of Family, Retinue, and countenance, is in some measure to be regarded: for if one valued at five hundred pound in goods, hath but himselfe and his wife, and another estimated at a thousand pound, hath wife and many children, &c. the first man by reason is to be rated as much as the other: And so of Lands: *Tamen quare what the Law is in such cases.*



The causes of these } To set the poor on work by a stock, &c.  
 taxations is three } To relieve the impotent,  
 } by money.  
 } To put forth Apprentices,

And this last, *sc.* the putting forth and taking of Apprentices, may well be termed a speciall work, and Seminary of mercy.

But in putting forth of these Apprentices, there must be regard had, to the Master, the child, and the parents.

The Master, *sc.* his ability and honesty: otherwise by some device, or hard intreaty, they may provoke their Apprentices to depart, or run away

Secondly, his trade or faculty, lest the Apprentice consume his time without learning any thing.

To these two, the Justices of Peace must have an eye.

The childe, *sc.* to put them out timely, and while they are young and tractable (so as they be above the age of seven yeers) otherwise by reason of their idle and base educations, they will hardly keep their service, or imploy themselves to work.

The parents, *sc.* to take away such as are brought up to live idly and loosely, or else such as are a burthen and charge to their Parents.

Again concerning the Masters; all persons of ability, are compellable to take Apprentices, according to this Statute; yea, if they be of ability, though they have but a house or sleeping place in the Towne, they are chargeable.

And Clergy men are not herein exempted, but may have Apprentices put to them; and this was the opinion of all the Judges, upon two severall references to them lately made from the Kings Majesty (as I have bin credibly inform'd.) Or at least they are chargable to contribute to the putting out of Apprentices: See the words of the Statute of 43 *Eliz. c. 2. hic antea.*

Note also, that as this Statute enableth the Church-wardens and Overseers (with the consent of two Justices of Peace) to put out Apprentices, so it doth enable them to place those Apprentices with Masters; for without Masters, there can be no Apprentices. And the said Justices may compell all such as be of ability, to take such Apprentices (according to their discretion) and if any such Master shall refuse to take such Apprentice, so to him appointed, the said Justices may binde such Master over to the next generall Gaole delivery, there to answer such default; And this was the direction of Sir Henry Mountague Knight, chief Justice of the Kings Bench at Cambridge Assises, Anno Dom. 1618. wherewithall agreed Sir Nicholas Hyde, and Sir Francis Harvy Judges of Assise at Cambridge, Summer Assises, Anno 1627.

Also the Statute of 43 *Eliz.* 2. seemeth to warrant as much, the words of which Statute to this purpose are thus ; Be it further enacted, that it shall be lawfull for the Church-wardens and Overseers, or the greater part of them (by the assent of two Justices of Peace) to binde any such children to be Apprentices, where they shal see convenient. *Plus hic antea.*

Or else the said Churchwardens and Overseers (with the consent of the said Justices) as it seemeth, may impose upon such Master (refusing to take such an Apprentice) a competent sum of money, for the putting out of such an Apprentice elsewhere. And upon the Masters refusal to pay such money, two such Justices may take their Warrant to levy the same by distresse, and sale of the offenders goods, &c. See *Poulton* 2. 4.

Or the refusers to take Apprentices, may be presented, and indicted for the same, upon the Statute of 43 *Eliz.* at the Assises, or Sessions of the Peace, as it seemeth.

An Apprentice put to a man in regard of a Farm, when his Lease expireth, his Apprentice must go still with the Farm, if the first Master wil: Otherwise where the Apprentice is put to a man in regard of his ability, or for other respect.

If the Parents of poor children shall refuse to suffer their children to be put forth (without good cause shewed) such Parents also may be bound over by the Justices, to answer their said default: And if the Apprentices shall refuse, the Justices may send them to the house of correction, *quousque*, &c.

Note that if the Master shall put his Apprentice into apparell, it is a gift in Law, and hee cannot after take it away, though hee should part with his Apprentice &c. *Br. Tarns.* 93.

An Apprentice which runneth from his Master, or shall be otherwise disordered, may be sent to the house of correction, by any Justice of Peace: Or else by order from the Sessions. See *hic cap.* 31.

Two such Justices shall take the account of such Overseers, at the end of their yeer, and of the Church-wardens, in every of these particulars following.

The Overseers account.  
P. 2.

- 1 Of all sums of money by them received, or rated, and not received.
- 2 Of all such stock of ware or stuff, as they, or any of the poore have in their hands,
- 3 What Apprentices they have put out and bound, according to the Statute.
- 4 What poore they have set to work, or relieved.
- 5 Whether they have suffered any of their poore to wander and beg out of their Town, or in the High-ways, or in their Town without the

their direction. See for this 39 *Eliz.* 3. & 4 & *Lamb.* 206. *Resol.* 15.

6 Whether they have monethly met to consider of these things.

*Lamb.* 428. 7 Whether they have assessed the Inhabitants, and Occupiers of lands &c. in their Parish, *sc.* all such as are of ability, and with indifferency.

*Ibid.* 8 Whether they have endeavoured to levy & gather such assessments.

9 Whether they have bin otherwise negligent in their office: within which words also, there seemeth to lie included if they shall neglect to execute the Justices Warrants to them, or any of them directed, for the levying of any forfeiture according to this Statute. See *P.* 2. & 12.

*Overseers defaults.* Now if the Churchwardens, or either of them, or any of the Overseers, shall refuse to make and yield a true and perfect account to the said Justices, of all such sums of money, and of all such stock, as a-

*P.* 24, 10. fore said; any two such Justices may commit them to the common Gaol, there to remain without baile, till they have made a true account, and satisfied and paid (to the new Overseers) so much of the said summe and stock, as upon the said account shall be remaining in his (or their) hands, &c. And if they make a false accompt, they may be bound over to the Assises, or Sessions, and there an Indictment may be preferred against them.

*P.* 2. 4. Also if any of the Churchwardens, or Overseers, shall refuse, or deny to pay and deliver over to the new Overseers, the arerages (summes of money, or stock) which shall be in their hands, and due, and behind upon their account to be made as aforesaid; any two such Justices of Peace may make their Warrant, to the present or subsequent Churchwardens and Overseers, or any of them, to levy the same by distresse, and sale of the offenders goods, rendring to the parties the overplus; and in defect of such distresse, any two such Justices of Peace may commit him or them to the common Gaol, there to remain without bail, untill payment or delivery of the said sum, arerages, and stock be made.

*Ibid.*

If any such stock shall be in the hands of any the poore to work, and such poore shall refuse to deliver the same, it seemeth any two such Justices may make the like Warrant to levy the same by distresse, and in defect thereof may commit such offenders, aforesaid.

*P.* 2.

And as for other the negligences of the Churchwardens and Overseers in their office, or in the execution of the orders aforesaid, every of them making default, shall forfeit for every such default xx.s. (but it seemeth such default must be proved either by the offenders confession, or by examination of witnesses) which forfeitures shall be levied (by the new Churchwardens and Overseers, or one of them) by Warrant from

*P.* 13.

any



any two such Justices of Peace, by distresse and sale of the offenders goods, &c. or in defect of such distresse, it shall be lawfull for any two such Justices of Peace, to commit the offender to the common Gaol, there to remain without bail, till the said forfeitures shall be paid : And the said forfeitures be employed] to the use of the poor of the same Parish.

Two such Justices of Peace are to allow the cause, or excuse of such Overseers, as shall not meet every moneth, to consider of the premisses, or as shall be otherwise negligent in their office, *Lamb. edit. 1614. p. 360.*

Two such Justices may make their Warrant (as well to the present as subsequent Overseers and Churchwardens, or to any of them) to levy all such sums of money, and all arerages; (of every one that shall refuse to contribute according as they shall be assessed) by distresse and sale of the offenders goods (rendring to the party the overplus:) And in defect of such distresse, such two Justices may commit him or them to the common Gaol, there to remain without bail, till payment be made of the said sum and arerages. Refusers to pay their rates.

If the said Justices doe perceive, that any Parish is not able to relieve their poore; then any two such Justices may tax and asseſſe any other persons within the Hundred (where the said Parish is) to pay such sums of money to the Overseers of the said poor Parish, for the said purposes, as the said Justices shall think fit according to the intent of this Law. P. 3.

Hee that shall bring any poor to any Town, which are burthensome to the Town, may be raised in his rates towards the reliefe of the poore of that Parish. *Sir Nicholas Hyde.*

Yea, Landlords taking into their houses poor persons (out of the Parish) like to burthen the Parish, if the Land-lord will not secure the Parish, &c. Then may he be charged towards the relief of the poor of that Parish to the value of his rent reserved; or according to the charge they so bring into the Parish.

If any persons find themselves grieved with any tax, or other act done by the Overseers, or by the said Justices of Peace, they are to be relieved at the Quarter Sessions. P. 7.

Head Officers of Cities and Corporate Townes (being Justices of Peace) have the same authority within their limits, as herein is limited to Justices of Peace of the County, &c. And no other Justices of Peace are to enter or meddle there. Corporate Towns. P. 9.

If any Parish shall extend into two Counties, or part thereof to lie in any City or Corporate Town where they have Justices, Then the Justices of every County, &c. shall intermeddle only within their owne limits: And every of them respectively within their limits, are to execute. P. 10.

cute this Law concerning the nomination of Overseers, binding of Apprentices, giving Warrants to levy Taxations, taking account of Overseers, and committing such as refuse to account, or to pay their arerages: And yet the said Overseers shall, without dividing themselves, execute their office in all places within the said Parish, but shall give up severall accounts, &c.

*Resol. 7* The Father, and Grandfather, and Mother, and Grandmother, and the Children, and Grandchildren of every poore impotent person, or other poor person not able to work, being of sufficient ability, shall relieve such poor persons in such manner as the Justices of Peace (of that County where such sufficient person dwelleth) at their generall Quarter Sessions shall assesse; upon pain that every one failing therein, to forfeit twenty shillings for every moneth: the said forfeiture to be levied by the Churchwardens and Overseers, or one of them, by Warrant from any two such Justices of Peace (the one being of the *Quorum*) within their limits, by distresse and sale, as aforesaid: and in defect of distresse, any two such Justices may commit the offender to prison, there to remain without bail, till the said forfeiture be paid. And the same forfeiture shall be employed to the use of the poor of the same Parish.

Now for the better furtherance of this so needfull and charitable service, and for the better help as well of the Justices of Peace, as of the Overseers, &c. I thought it not amisse to set down here certaine resolutions and advices of the Judges (as I find them in *M. Lambert*) together with certain other observations to this purpose.

*Resol. 20.* If there be but one Church-warden in the Parish, hee sufficeth with the other Overseers.

*Resol. 8.* If the parents be able to work, and may have work, they are to finde their children by their labour, and not the Parish: But if they be overburthened with children, it shall be a very good way to procure some of them to be placed Apprentices, according to the Statute. And such Apprentices would be put out to Husbandry and Huswivery.

Young children, whose parents are dead, are to be set on work, relieved, or maintained, at the charge of the Towne where they were dwelling at the time of the death of their parents, and are not to be sent to their place of birth. &c. For if the parents were not Rogues, we may not make the children Rogues, except they wander abroad and beg. This was the direction of *Flemming*, chief Justice, in a case between *Weston* and *Cowledge*. *Anno 11. Jac. Regis.*

*Resol. 7.* If any (not being Rogues) shall travell with their children thorow a Towne, and the father or mother die, or run away, that Towne is not bound

bound to keep their children, nor to send them away but only in charity, except they become wandring beggers.

A travelling woman, having a small child sucking upon her, is apprehended for Felony, and sent to the Gaole, and is after arraigned and hanged; this child is to be sent to the place of its birth, if it can be known, otherwise it must be sent to the Towne where the mother was apprehended; for that that Town ought not to have sent the child to the Gaol (being no Malefactor) and so was it delivered by Sir *Nicholas Hyde*, at *Cambridge* Lent Assises, *Anno 3. Caroli Regis.*

Such persons as be of any Parish, and have able bodies to work, if they refuse to worke at such wages as is taxed, or commonly given in those parts, are to be sent to the house of Correction, and not to their place of birth, or last dwelling by the space of a year. But if they have any lawfull means to live by, though they be of able bodies, and refuse to work, yet are they not to be sent to the house of Correction. *Resol. 10.*

None may be suffered to take reliefe at any mans doore, though within the same Parish, unlesse it be by the order of the Overseers: neither may any be suffered to beg by the High-ways, though in their own Parish. *Resol. 15. 39 El. 2.* **113**

No man is to be put out of the Towne where he dwelleth, nor to be sent to their place of birth (or last habitation) but a vagrant Rogue; Nor to be found by the Town, except the party be impotent; but ought to set themselves to labour, if they be able, and can get work: if they cannot get work, the Overseers must set them to labour. *Resol. 9.*

And so of them that have or shall have houses, when their estates be expired: And servants, whose times of service are ended, though they cannot get houses: For they must provide themselves houses anew, if they be not impotent, *Ibidem.*

So that such persons, whose estates of their houses be expired, and servants when their service is ended, they shall not be put out of the Towns where they so last dwelled or served: Neither are they to be sent from thence to their place of birth or last habitation, but are to be settled there to work, being able of body, or being impotent, are to be there relieved: And yet if such persons shall wander abroad begging, out of that Parish, then they may be sent as Vagabonds (from the place where they shall be taken wandring, or begging) to their place of birth, &c.

But for the placing and settling of these poore people (who now for want of charity, are much sent and tossed up and down from Towne to Town, and from Countrey to Countrey) it hath been holden by some, that it is in the power of the next Justice of Peace to give order therein:

And



And that upon Appeal from him, the Justices of Peace at the Quarter Sessions may fully take order therein: and that their order made in Sessions will not easily be avoided.

143 But Sir *Fr. Harvey* at Summer Assises at *Cambridge*, Anno 1629. did deliver it, that the Justices of Peace, (especially out of their Sessions) were not to meddle either with the removing, or settling of any poore, but only of Rogues.

If a man hireth an house in *A.* and being there with his wife and children, he afterwards shall binde himselfe as a servant with one dwelling in *B.* yet are not his wife and children to be sent to *B.* or placed there, but are to remain still at *A.* where they were once settled. Otherwise, if the husband hath hired an house in *B.*

A Maid-servant gotten with child at *A.* by her fellow-servant (or by another young man of the same Town) after both their times of service expireth, and they marry, and then the young man is retained at *B.* then the woman is delivered of her child, shee with her child are to be sent to the father at *B.* and there they are to be settled.

Note (by an old Law) he which commeth guest-wise to an house, and there lyeth the third night, is called an *Hoghenhine* (or *Agenhine*) and after the third night, he is accompted one of his family in whose house he so lyeth: and if he offend the Kings Peace, his Oast must be answerable for him. *Termes de Ley.*

Regul. II. Such as shall remove or put any out of their Parish, that be not to be put out, this is against the Statute concerning the relief of the poore, and finable; And if any have bin so sent, they may be sent back again.

P. Neg. 5. II Now this fine seemeth to be by force of the Statute 39 *Eliz. cap. 4.* and to amount to five pounds. And is to be levied by distresse and sale of the offenders goods, upon a Warrant under the hands and seals of any two Justices of Peace, either upon the confession of the offenders, or else upon the testimony of two sufficient witnesses.

39 *Eliz. 4.*  
P. Neg. 5. II All such persons as in any wise shall disturbe the execution of this Law, concerning Rogues, or the reliefe, or settling of poore impotent persons, shall forfeit five pounds; and any two Justices of Peace may binde such offenders to their good behaviour; and may also by Warrant under their hands and seals, cause the said five pounds to be levied by distresse and sale of the offenders goods, as aforesaid: which forfeiture the said two Justices also, by their discretion, may order, to be employed to the relief of the poore where the offence shall be committed, or to the maintenance of the house of Correction, &c. *quare* for this forfeiture, for that the Statute, 39 *El. cap. 3.* made for the reliefe of the poore, is expired.

Next

Next, here is consideration to be had of three sorts or degrees of poor.

1 Poore by impotency and defect.

- 1 The aged and decrepit, that are past labour.
- 2 The infant, fatherlesse and motherlesse, and not able to work.
- 3 The person naturally disabled, either in wit, or member, as an Ideot, Lunatick, Blinde, Lame, &c. not being able to work.
- 4 The person visited with grievous disease or sicknesse, though casually, yet thereby for the time being impotent.

All these (being impotent and not able to work) are to be found and provided for by the Over-seers, of necessary reliefe; and are to have allowances proportionable, and according to the continuance and measure of their maladies, and needs; and of these it may be said, *Si non parvisti, occidisti.*

2 Poore by casualty.

- 1 The person casually disabled, or maimed in his body, as the Souldier, or Labourer, &c. maimed in their lawfull callings.
- 2 The householder decayed by casualty of fire, water, robbery, suretiship, &c.
- 3 The poore man overcharged with children.

All these last (and such others) having ability and strength of body, but not sufficient means to maintain themselves, are to be holden, or set to work by the Overseers, & being not able to live by their work, are in charity further to be relieved in some reasonable proportion, according to their severall wants and necessities.

3 Thriftlesse poore.

- 1 The riotous and prodigall person, that consumeth all with play, or drinking, &c.
- 2 The dissolute person, as the Strumpet, Pilferer, &c.
- 3 The slothfull person, that refuseth to work.
- 4 All such as wilfully spoil or imbecill their work, &c.
- 5 The Vagabond that will abide in no service or place.

For all these last, the house of correction is fittest: And there such persons being able in body, are to be compelled to labour; that by labour and punishment of their bodies, their froward natures may be bridled, their evill minds bettered, and others by their example terrified. Also the rule of the Apostle is, That such as would not work, should not eat, *2 Thes. sal. 3. 10.*

And all such persons sent to the house of correction, must there live by their own labour and work, without charging the Town, or Countrey, for any allowance, see to that purpose the Statute, *7 Jac. cap. 4.*

But for the Overseers to suffer such persons, (or any other persons,

which can live of their labour or otherwise) to be chargeable to the Town, or to relieve such, were a means to nourish them in their lewdness, or idleness, which take it; and to rob others of relief that want it, to wrong those of their money that pay it, and to condemn them to oversight which dispose it.

And yet if any of these last happen to prove impotent, as also in cases of manifest extremity, it seemeth they are to be relieved by the Towne: But I leave that to better consideration.

7 Jac. 3.

Where any sums of money (at any time within three years before the making of the Statute 7 Jac. cap. 3.) have been given, or hereafter shall be given to be continually employed for the binding out of Apprentices unto Trades and Occupations, the Parson, or Vicar, Constables, Churchwardens, and Overseers for the Poor, in Towns not incorporate, or the most part of them, are by the Statute appointed to have the disposing of such stocks or sums of money: which persons shall once every yeere, within one month after Easter day, make a true and perfect account before two or mo Justices of Peace, (dwelling in or next to every the said Towns or Parishes) of all such sums as they have so employed, and of all bonds taken for the payment thereof, and of all sums remaining in their hands and not employed.

Licenced  
to travell.39 Eliz. 4.  
1 Jac. 25.

Two Justices of Peace may licence poore diseased persons to travell to the baths for remedy of their griefs, so as they be provided of necessary relief (*sc.* with money in their purses, &c.) for their travell, and beg not. See hereof *postea tit. Rogues cap. 27.*

39 Eliz. 4.  
39 Eliz. 17.

The Justice of Peace dwelling next where any person suffering shipwrack shall land, or where any poore Souldier or Mariner shall land, may, and ought to make a testimoniall under his hand to such persons of their landing, &c. and thereby to licence them to passe the next direct way to their place of birth or dwelling, &c. limiting them therein a convenient time for their passage. See the Title *Rogues.*

But it seemeth no Justice or Justices of Peace may or can in any case licence any poore man to wander or beg at all, nor may licence any poore to travell, but only in these former three last cases. See the title *Rogues.*

Here I thought it not amiss shortly again to observe such offences, as the Justices of Peace out of their Sessions are to deal withall, and where the forfeitures (or part thereof) are given by the Statute to the use of the poore of the Parish where the offences be committed.

Alchouses.  
1 Jac. 9.

Alchouse-keepers, and Inne-keepers, &c. suffering Townsmen, or any other person, to continue drinking in their houses, the forfeitures shall be to the use of the poore of that Parish, &c. See before *in. Alchouses.*



Of 21 Jac. cap. 7. So of Alehouse-keepers without Licence. *Ibidem.*

So of Alehouse-keepers, &c. selling lesse then one quart of their best Beer or Ale for 1 d. and two quarts of their small for 1 d. See *ibid.*

So of Townsmen, or others, tipling in Alehouses, &c. See *ibid.*

So of Constables, &c. not levying the forfeitures of the offenders afore- 4 Jac. 1 Jac.  
said, or not whipping the offenders, upon the Justices Warrant. See *ibid.*

So of persons convicted of drunkenness. *Ibid.*

So the money made upon sale of Tinters, or other like Engines (found Cloth by the Justices of Peace, or by the Overseers of cloth.) See *tit. Cloth, antea.*

All penalties and forfeitures for want of length, breadth, and weight of Cloth, limited by any former Act now in force, or by this present Act, shall be distributed into three equall parts, whereof two parts shall be unto the poore of the Parish where the said Cloth shall be made, to be levied by Warrant made by two Justices of Peace (directed to the Churchwardens and Overseers of the poor of such Parish) by way of distress, and sale of the offenders goods, &c. 21 Jac. cap. 18.

The moiety of the forfeiture for destroying the spawn of Sea-fish. See Fish. *tit. Fish, antea.*

The flesh in Lent time, found in any victualling house (upon the Justices search,) *Vide tit. Fish-days.*

Taking, or destroying of any Pheasant, Partridge, or other Fowle. *Vide Fefants. tit. Partridges.*

Taking, or destroying the Eggs of any Fefant, Partridge, or Swan. See *ibid.*

Meeting of people out of their own Parishes, on the Sunday, for any sport or pastimes whatsoever. *Vide tit. Games.*

Using any unlawfull games or pastimes within their own Parish, by any person upon the Sunday. *Vide ibid.*

Taking, destroying, tracing, or coursing in the snow, of any Hare. See *ibid.*

Keeping of any Greyhound, setting Dog, or Net, to take Partridges or Fefants, contrary to the Statute. See *ibid.*

Selling of any Deer, Hare, Partridge, or Fefant: See *ibidem.* & *vide Stat. 1 Jac. cap. 27.*

Hawking between the first day of July, and the last of August. *Vide tit. Partridges.*

Overseers of the poor, negligent in the execution of their office. See be- Poore.  
fore in this title, *Poore.*

Parents, or children, failing to relieve each other, as shall be ordered at the Sessions. See *ibid.*

Such as shall put out any of their Parish, that be not to be put out. See *ibid.*

Such as shall any ways disturbe the relief, or setting of the poore. See *ibidem.*

Recusants. Persons absenting themselves from Church upon any Sunday. *Vide titulo Recusants. 3. 1. cap. 4.*

Rogues. Persons disturbing the execution of the Law made 39 *Elix.* concerning the punishing, or conveying of Rogues. *Vide tit. Rogues.*

Sending Rogues by a generall Pasport. See *ibid. Resol. 13.*

Constables not receiving a Rogue, to convey him according to the Statute. See *ibidem.*

If a Rogue shall not be delivered to the next Constable, to be conveyed still forward, &c. See *ibidem.*

If a Rogue be sent to the Town whereto he ought, and be there refused. See *ibid. Resol. 12.*

The Minister not keeping a Register-book, and therein entring every Testimoniall made for the conveying of Rogues punished in his Parish. See *ibidem.*

Constables not doing their best endeavour for the apprehending, punishing, and conveying of all Rogues. See *ibidem.*

The Constable which shall not punish a Rogue, &c. brought to him, shall forfeit 20 s.

Every person that shall not apprehend Rogues resorting to his house. See *ibidem.*

Every person bringing into this Realm any Rogue. See *ibidem.*

Prophane swearing and cursing. See *tit. Swearing.*

Carriers or Drovers travelling upon the Sunday.

And Butchers killing, or selling upon that day. *Hic cap. 49.*

Preachers. CAP. 41.

**1 Mic. 1. 6. 3.** **IF** any person shall of his own authority, willingly and of purpose, by open act, maliciously disturbe any Preacher in the time of his Sermon, or other Divine Service, or shall be aiding, procuring, or abetting thereto, or shall rescue any such offender being apprehended, or shall disturbe the arresting of any such offender; and that any of the said offenders shall be brought before any Justice of Peace (within the County where the said offence shall be committed) then every such Justice of Peace (upon due accusation thereupon made) shall forthwith commit every such offender.

fender (so brought before him) to safe custody, by his discretion.

Within six days (after accusation had of any of the said offences, and after the committing of the said offender to safe custody by one Justice of the Peace) one other Justice of the Peace of that Shire must joyn with the first Justice in the examination of the said offence; and if they two upon their examination shall finde the party accused guilty (and that by two sufficient witnesses, or by his own confession) then shall they commit him to the Gaole, there to remayne without baile, for three moneths then next ensuing: and further to the next Quarter Sessions, &c. But inquire, if all this Statute be not repealed by 1 Eliz. cap. 2. in generall words at the latter end thereof. *Lambert 199.* yet it seemeth not to be repealed in this matter, *sc.* for disturbance of Preachers: for this Statute containeth divers severall matters, and so divers Statutes. *Crompt. 14.*

And yet Sir *Nicholas Hyde*, at *Bury*, Lent Assises, *Anno 1629.* delivered it (as I am credibly informed) that this Statute was wholly repealed, by the Statute made, 1 Eliz. cap. 2.

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which can live of their labours or otherwise) to be chargeable to the Town, or to relieve such; were a means to nourish them in their lewdness, or idleness, which take it; and to rob others of relief that want it, to wrong those of their money that pay it, and to condemn them to oversight which dispose it.

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113  
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will satisfie such charges, &c. the appraisement to be made by foure Inhabitants of the Parish where such goods be, yielding to the party the overplus of the money : And where the offender hath no such goods, then the charge thereof must be born by the Towne where the offender was taken. And the taxation made on the Town for that purpose, must be allowed under the hand of one Justice of Peace : And by like Warrant from such Justice, the goods of the person refusing to pay such taxation, may be distrained and sold.

## Purveyors. C A P. 44.

13 ELIZ. 01. **I**F any person within five miles of *Cambridge*, or *Oxford*, shall refuse  
P. 33.  
1 LAC. 15. reasonably to serve the provision of the said Universities, then may the  
21 L. C. 28. Vice-Chancellor, and any two Justices of Peace within the same Univer-  
3 Car. 4. sity, Town or County, under their hands and seals, allow any the Kings  
Purveyors to provide any Corn, or vi<sup>t</sup>uall of any such person, to the  
use of the King, as they lawfully may in other places, without the said  
Precinct.

2 & 3 P. & The Vice-Chancellor (or his Commissary for the time being) in ei-  
M. cap. 15. ther of the Universities, with any two Justices of Peace of the same  
13 ELIZ. County, may by the oaths of twelve men, enquire of, and punish the of-  
B. Inst. 60. fences of Purveyors, Takers, Badgers, Loaders, Poulters, or other mini-  
P. Priv 32. sters for the Kings Majesty, and of all other common Poulters, &c. com-  
mitted contrary to the Statutes for the priviledges of the Universities,  
&c. sc. in taking or bargaining for any vi<sup>t</sup>uall or grain, within *Cam-*  
*bridge* or *Oxford*, or within five miles of either of them; or in taking or  
bargaining for any vi<sup>t</sup>uall or grain bought within the said five miles,  
by any common minister of any Colledge or Hall, to be spent there;  
without the licence of the Chancellor, or Vice-Chancellor in writing,  
under the Seal of their Office; or not according to such licence : and eve-  
ry such offender shall forfeit the quadruple value of such grain or vi<sup>t</sup>u-  
all, so taken or bargained for, and shall suffer imprisonment three mo-  
neths without bail; which punishments the said Vice-Chancellor, &c.  
and two Justices of Peace may see duly executed accordingly.

23 H. 6. 14 If any buyer, or other Officer of any Lord, or other person, (but only  
for the King and Queen, and their houses) doe take any vi<sup>t</sup>uall, corn,  
hay, cariages, or any other thing whatsoever, of any of the Kings people,  
in any wise against their will (without lawfull bargain between the said  
buyer and the seller made) then upon request made to the Major, She-  
riff

niffe, Bailiffe, Constable, Officer, or other the Kings Ministers (under which word\* Ministers, the Justices of Peace be also comprehended) <sup>1. Crom. 6. 2.</sup> of the Citie, Boroughs, Counties, or places where such taking shall happen to be, the said Major, Sheriff, Minister, and Justice of Peace, shall presently take and arrest such buyer and officer so offending, and them shall send to the Kings next prison, there to remain without bail, untill they have delivered the said goods so taken, or the value thereof.

See more of Purveyors, *tit. Felonies by Statute.*

*Recusants.* CAP. 45.

**I**F any person above 16 years of age, do forbear to come to Church by the space of 12 moneths, contrary to the Statute 1 Eliz. 2. Any Justice of Peace of the County where such an offender shall dwell or be, may make thereof Certificate into the Kings Bench, to the end such offenders may there be bound to their good behaviour. <sup>One Justice</sup> <sup>22 Eliz. 1. P. 1.</sup>

Any one Justice of Peace may require the submission and declaration of conformity to his Majesties Laws, of Recusants and Sectaries, within three moneths after their conviction, &c. And in default of such submission, may require them to abjure this Realme: which Abjuration notwithstanding, shall be in open Sessions, <sup>35 Eliz. 1. P. 19.</sup> 21 Jac. cap. 28.

For the form of such submission, see the stat. of 35 El. c. 1. P. Recusants. 20

No woman covert, or married woman, shall be forced to abjure, by virtue of this Statute.

Where one Justice of Peace may require a Popish Recusant to take the Oath of Allegiance: See *posse* in this title.

Any Justice of Peace within the County, in which any Jesuit, or other Popish Priest, or other Ecclesiasticall person shall arrive or land, within 3 days after their landing, may take their submission oath, and acknowledgement, touching their obedience to the Kings Majesty, and his Laws provided in cases of Religion: but if it be any other subject, who is no Priest, &c. and yet brought up in any Seminary, they must make their submission, and take the Oath, &c. before two Justices, &c. See more in this Title. <sup>27 Eliz. 1. P. Jesuits 7.</sup> <sup>P. Jesuits 4.</sup>

Every subject knowing any Jesuit, or Popish Priest, to be within the Kings Dominions, ought to discover the same to some Justice of Peace, or other higher Officer, within twelve days, &c. And such Justice of Peace ought within 28 days after such discovery made to him, to give information thereof to one of the Kings Privy Councill, &c. upon pain of two hundred Marks. And upon such information given by the Justice



Justice of Peace, he shall have re-delivered to him a note in writing subscribed by such Privy Councillour, &c. (with his own hand) testifying that such information was made unto him.

13 Eliz. 2.  
P. Rome. 6.

If any person to whom any *Agnus Dei, Crosse, Picture, Beads*, or such superstitious things shall be delivered or offered, do disclose such deliverer or offerer to any Justice of Peace, &c. That Justice of Peace, within 14 days, must declare the same to one of the Kings Privy Councill, or else he shall incur the danger of a *Premunire*.

Co. II. 63. b.  
3 Jac. 4.  
P. 50.  
P. Sacraments 5.

If there be any subject of this Realm, be he Popish Recusant, (convict, or not convict) or other person, that shall not repaire every Sunday to some Church (both to Morning and Evening Prayers) and then and there to abide orderly during the time of prayer, preaching, or other service of God there used, according to the Statute made, 1 Eliz. c. 2. Then any one Justice of Peace of that limit where the said party shall dwell, upon proof to him made of such default (by confession of the party, or oath of witnesse) may within one moneth next after such default, call the party before him, and if he shall not prove sufficient cause of his absence (to the satisfaction of the said Justice) the said Justice of Peace may give Warrant under his hand and seal, to the Church-wardens, to leavy 12 pence for every such default, by distresse and sale of the offenders goods, &c. And in default of such distresse, the said Justice of Peace may commit such offender to prison, untill payment be made of the said sum so forfeited; the same to be employed to the use of the poor. Also this Statute seemeth to extend to women that be married: See Co. II. 61. b. See also the Title, *Riots, hic cap. 88.*

And so note, that this penalty of 12 d. and of 20 li. a moneth, shall be both of them paid by a Recusant convict. Co. II. fol. 63. b.

Also this repairing to Church every Sunday, must be as well to Evening Prayers as to Morning Prayers, for it ought to be an entire day, and an entire Service; and so Sir *Richard Hutton* (one of the Judges of the Court of Common Pleas) did deliver it in his charge at *Cambridge Lent Assises, Anno 1 Caroli Regis*. And therewith agreed Sir *Robert Barile* at *Summer Assises, Anno 9. Caroli Regis*.

3 Jac. 5.  
P. 60.

The party that doth first discover to any Justice of Peace, any Recusant, or other person entertaining or relieving any Jesuit, Seminary, or Popish Priest, or any Masse to have bin said, and any of them that were present thereat, within three days after the offence, (and by reason of his discovery, any of the offenders be taken & convicted) shall be freed from danger of the offence; if he be an offender therein, & have the third part of the forfeiture which shall be forfeited by such offence, 3 Jac. cap. 4.

Before

Before some Justice of Peace of the county, liberty, or limit where the parents of a child sent beyond seas, without licence, did dwell, such child must take the oath of allegiance expressed, *3. Jac. c. 4.* And they that were beyond seas before the making of this act, are to take the same oath within six months after their returne, before some Justice of Peace where such persons inhabit, before they can take the benefit of any gift, conveyance, devise, or descent, &c. of any lands or tenement, &c. *3. Jac. cap. 5.* P. 70. 71.

Popish Recusants indicted or convicted, and all other persons which have not repaired to some usuall Church or Chappell, and there heard divine service, by the space of three months last past, dwelling, or which shall dwell in any County within ten miles of the City of London, shall depart from thence according to this Statute, and deliver up his or her name to the next Justice of peace in the same County, upon paine of forfeiture of 100. li. *3. Jac. cap. 5.* P. 61.

Any one of the foure Justices of peace, which by this Statute may licence a confined Recusant to travell, may minister the oath, to be taken by such Recusant, that he hath truly informed them of the cause, of his journey, and that he shall not make any causelesse stayes, *3. Jac. cap. 5.* P. 63.

After any warrant be granted out from the quarter Sessions, or from any foure Justices of peace therefor, the taking away of the armour of any Popish Recusant convicted; if any such Recusant, having any such armour, gunpowder, or munition; or if any other person having any such armor, to the use of any such Recusant, shall refuse to declare unto the said Justices of peace, or any of them, what armor he or they have, or shall hinder or disturb the delivery thereof, to any of the said Justices, or to any other person authorised by their Warrant to take &c. seize the same, then every such offender shall be imprisoned by Warrant of & from any two Justices of peace, of such County, by the space of three moneths without baile. 3. Jac. 5. P. 75.

Any two Just. of the P. (the one being of the *quorum*) may require any Popish Recusant man or woman, of the age of 18. yeeres or above, which is convicted or indicted for Recusancie, to which hath not received the Communion twice the yeere past; or which travellth the country, and is unknowing (and being examined upon oath, shall confesse, or not deny themselves to be Recusants, or not to have received the Communion twice the yeere past) to take the oath of Allegiance appointed by the Statute, *3. Jac. cap. 4.* And if such person shall refuse to answer upon oath, such Justices of Peace examining him as aforesaid; or to take the said oath of Allegiance, then the said two Justices shall commit the same person to the common Gaole, there to remaine without baile, untill the next Assises or quarter Sessions: But Noblemen and Noblewomen are excepted, Two Justices. 3. Jac. 4. P. 45. 46.

excepted, as not to bee dealt withall herein by the Iustice of Peace.

1. *Iac.* 7.

Also any two Iustices of Peace may take the said oath of Allegiance of such persons as have charge of Castles, Fortresses, Block-houses, or Garrisons, and of all Captaines having charge of souldiers within this Realme: And upon refusall may commit the offender, being of the age of 18. yeares, to the common Gaole, there to remaine without baile till the next Assises or quarter Sessions, 7. *Iac.* 6.

Also by the same Statute 7. *Iac.* cap. 6. any two Iustices of Peace, the one being of the *quorum*, may require any other person or persons, man or woman, be they Recusants or not, of the age of 18. yeares or above (under the degree of a Baron or Baronesse) to take the said oath; and may commit them as aforesaid, upon their refusall.

One Iustice  
7. *Iac.* 6.

And by the said Stat. if any person whatsoever, of the age of 18. yeares (under the degree of a Baron) shall stand and bee presented, indicted, or convicted, for not coming to Church, or receiving the Communion, before the Ordinary, or any other having lawfull power to take such presentment or indictment; or if the Minister, pety constable, & Churchwardens, or any two of them, shall complain to any one Iustice of Peace neere adjoyning, and the said Iustice shall find cause of suspicion, then that Iustice or any one other Iustice of Peace within whose commission or power such person shall be, upon notice thereof, shall require such person to take the said oath; and if any person shall refuse to take the said oath rendred to him, or her, as aforesaid, then such Iustice or Iustices shall commit such offender to the common Gaole, there to remaine without baile till the next Assises or quarter Sessions.

Two Iustices.  
P. 45.

The said two Iustices of Peace shall certifie in writing (subscribed with their hands) at the next quarter Sessions, the names and place of aboard, of such persons as have so taken the said oath before them, by force of the Statute, 3. *Iac.* 4.

And it seemeth requisite, that the Iustices or Iustice of Peace, do make like certificate (at the next Assises or Quarter Sessions) of such persons as have taken the said oath before them, by force of the Statute, 7. *Iac.* 6.

3. *Iac.* 4.  
P. 49.

Such persons as have been reconciled to the Pope, if they shall return into the Realme, and thereupon within six dayes next after their returne shall submit themselves to his Majestie and his Lawes, before any two Iustices of Peace, joyntly or severally, of the Countie where they shall arrive, the said Iustices may take such submission, and withall may take their oath to the Supremacie, and their oath of Allegiance, and the said oaths so taken, the said Iustices shall certifie at the next Quarter Sessions, upon paine of 40. li.

Any



Any two Iustices of Peace of the County, where any of his Majesties subjects (not being a Jesuit, or other Popish Priest, &c.) brought up in any Seminary, shall arrive within six moneths next after Proclamation to be made in that behalfe in the City of *London* under the great seale of *England*, may (within two dayes next after such returne) receive his submission to his Majesty and his Lawes, and take his oath to the Supremacy. 27. Eliz. 2.  
P. Jesuits. 4.

The Justice or Justices of Peace that shall receive or take any submission or oath, as aforesaid (by force of the Statute of 27. *Eliz. cap. 2.*) shall certifie the same into the Chancerie, within three moneths after such submission, upon paine to forfeit one hundred pounds. 27. *Eliz. cap. 2.*  
*P. Jesuits 11.*

If any married woman (under the degree of a Baronesse) being lawfully convicted as a Popish Recusant, shall not within three months after such conviction, repaire to the Church, and receive the Communion, &c. Any two Justices of P. (the one being of the *Quorum*) may commit her to prison, there to remain without baile, untill she shall conforme her selfe, &c. 7. Jac. 6.

Any two Justices of P. from time to time, may search the houses and lodgings of every Popish Recusant convict, and of every person, whose wife is a popish Recusant convict, for Popish Books, & Reliques of Popery; And they may presently deface & burn such Books and Reliques as they shall find, yet if it be a Relique of any price, the same is to be defaced at the generall Sessions of the Peace, and to be restored to the owner. 3. Jac. 5.  
P. 74.

A convicted Popish Recusant of small abilitie (not having twentie Markes freehold *per annum*, or fortie pounds in goods, nor being a Feme covert) that shall not repaire to his place of usuall dwelling, or place of birth, &c. and there notifie himselfe to the Minister and Constables (according to the Statute of 35. *Eliz.*) Or shall afterwards remove above five miles from the same, if after he be apprehended, and shall not conforme himselfe within three moneths, in coming usually to the Church and in making such publique submission, as in the said Statute is appointed, being thereunto required, and hereunder is mentioned: Then any two Justices of Peace may require such offender to abjure the Realme, and may assigne him the time and Haven, &c. And every such offender shall upon his corporall oath, before the said Justices, abjure this Realme of *England*, and all other the Kings Dominions, for ever. 35. Eliz. 2.  
P. 31.

The Oath of the abjuration may be taken by the Justices of Peace, of Recusants in this forme, or to this effect:

You shall swear that you shall depart out of this Realme of *England*, and out of all other the Kings Majesties Dominions, and that you shall not returne hither, or come againe into any of his Majesties Dominions,

but by the Licence of our said Sovereign Lord the King or of his heires: to helpe you God. See *Statut. 1. 19. Vide Will. 40.*

And such Recusant thereupon shall depart out of this Realme, at such Haven and Port, and within such time as shall in that behalfe be assigned and appointed by the said Justices of peace, unlesse hee be letted and stayed by such lawfull meanes or cause, as the Common Lawes do allow in cases of abjuration for Felonie, &c. 35. *Eliz. cap. 2.*

If any such Recusant shall refuse to make such Abjuration; or after such Abjuration made, shall not goe to such Haven, and within such time as is so appointed him, and from thence depart out of this Realme, according to this Statute, or after such departure, shall returne or come againe into any his Majesties Realmes or Dominions, without his Majesties speciall Licence, in that behalfe first obtained; in every such case the person so offending shall be adjudged a Felon, *ibidem.*

The Justices of Peace before whom any such Abjuration shall bee made, shall cause the same to be presently entered of record before them, and shall ceruifie the same at the next generall Gaole delivery to be holden in the same Countie. 35. *Eliz. cap. 2. P. 31.*

The Bishop of the Diocese, or any one Justice of Peace, or the Minister of the Parish where such convicted Popish Recusant, of small ability shall be, may require the submission of such Recusant, 33. *Eliz. 2. P. 31.*

The forme of such submission, See *ibid. P. 34.*

Four Ju-  
stices.  
3. Jac. 5.  
P. 36.

Recusants confined to five miles, may be licensed by any foure Justices of Peace, and the Bishop or Lieutenant, or any Deputy-Lieutenant residing in the said Countie, under all their hands and seales, to travell about their necessary busineses out of the compasse of five miles. But such Licences must specify the particular cause of the said Licence, and the time of their absence must therein be limited, and the partie so licensed must first take his Oath before the said foure Justices, or any of them, that he hath truly informed them of the cause of his Journey, and that he shall not make any causelesse stayes. See the forme of such Licence, *hic posita, ut. Prædictis.*

Riots, Routs, &c. CAP. 46.

One Ju-  
stice.

Lamb. 185.  
34. E. 3. 1.  
P. 117. 18.  
Cromp. 63.  
24. H. 7. 8, 9  
Br. Peace 7.

Any one Justice of Peace alone, may use all good meanes to prevent a Riot or Rout before it be done; and for to stay it whilst it is in doing, and in the doing may take and imprison the Riotors, or binde them to their good behaviour: but being once done, and committed, one Justice of Peace cannot make enquire thereof, nor asseesse any fine,

nor

nor award any Proceſſe, nor otherwiſe meddle to puniſh it in the nature of a Riot or Rout, but onely as a Treſpaſſe againſt the Peace, or upon the Statutes of *Northampton*, or of *Forcible Entries*: whereof ſee the title *Forcible Entries*.

And yet if one Juſtice of Peace, ſitting in a judiciall place (as in the *Cromp. 63*. *Sessions*) ſhall ſee a Riot, he may command to them to be arreſted, and may make a Record thereof, and the offenders ſhall be concluded thereby: but if one Juſtice of Peace ſhall ſee a Riot in another place, and ſhall command them to be arreſted, and ſhall make a Record thereof, the offenders ſhall not be concluded thereby, but may tra verle it: And yet the Juſtice may record it, and certiſie the ſame to the next *Sessions*, &c. *Cromp. 41*.

If a Juſtice of Peace will commit a man to ward, pretending untruely, *ibid.* that he did a Riot, where he did none, the party may have an action of Treſpaſſe againſt him, *Faz. Inſt. 9. ſamen vide Co. 8. fol. 121. a.* that the Record of a force made by a Juſtice of Peace is not Traverſeable, for that he doth it as a Judge: And ſo the Juſtices Record of a Riot, is not traverſeable. See *hic poſtea*. Alſo ſee *Br. Judges 2. & 10*. That an Action will not lie againſt a Juſtice or Judge of Record. *Co. 2. R. 3. 10. hic cap. 120. ſc. pro re facta judicialiter*.

Every Juſtice of peace (being of and in the Countie, and having notice of any Riot, Rout, or unlawfull Aſſembly) ought to have a care of the execution of the Statute made 13. *H. 4. ca. 7.* (*viz.* that the Riotors, &c. be arreſted, and removed,) for if that Statute be not executed in every part thereof, by ſome of the Juſtices, the two next Juſtices of Peace ſhall forfeit each of them 100.li. and every other Juſtice of Peace within that Countie, in whom there ſhall be any default, ſhall be ſiſtable in the Star-Chamber. *One Juſtice. Dyer 210. Lamb. 321.*

And therefore every Juſtice of Peace of the Countie, hearing of any Rout, or of any intention of a Riot (without making any precept, or tarrying for his fellow Juſtice, or for the Sheriffe) ſhall doe well to goe himſelfe (if hee be able) with his ſervants, or other power of the Countie, if need bee, to the place where ſuch perſons be ſo aſſembled, and to ſuppreſſe them, and all ſuch as he ſhall finde and ſee riotouſly aſſembled (and armed) to arreſt them, and to force them to put in ſurety for the Peace, or for their good behaviour; and for reſuſing to give ſuch ſuretie, or in default of ſureties, to imprifon them; and alſo he may take away their weapons and armour, and leiſe and priſe them for the King. *Vide tit. Armour, and Forcible Entry.* *14. H. 7. 9 b. Lamb. 184. Br. Peace 7. Lamb. 79. 124.*

So that one Juſtice of Peace ſeeing a Riot, may and ought to re-



cord it, and to attach the Riotors, and to commit them, or binde them over to the good behaviour; But hee may proceed no further therein. For he cannot fine them without an enquire, which enquire must be by a Jurie, and before two Justices of Peace; And may be at any time within the moneth. Otherwise for omitting of attaching or arresting the offenders at the first, the Justice which saw the Riot is punishable: But the enquire by a Jurie must be within one moneth, *sub pœna* 100.li. to the two next Justices, &c. See *hic postea*.

14.H.7.10. And if the Justice of Peace (being come to the Place) shall not finde  
Br. Peace 7. the Riottors yet come thither, he may leave his servants there (with his Warrant in writing, or without Warrant, as it seemeth) to restrain them in their said enterprize, or else to arrest such offenders, when they shall come, if they shall offer to commit any Riot, or to breake the Peace; and this for speedy remedy.

So if the Justice be sicke, and shall heare of a Riot, hee may send his servants, or other power of the Countie, if need be, (with his Warrant under his hand and seale, or without such Warrant, by word of mouth)  
14.H.7.10. to the place to repress it, or to arrest such offenders, and to bring them  
Br. Peace 7. before him, to find sureties for the Peace: and all this he may doe without expecting the coming of any his fellow Justices, or of the Sheriffe, or under-Sheriffe, and this also for expedition.

P.16.27. Also one Justice of Peace, by the Statute made 1.M.cap.12. and 1.El. 16. might have made Proclamation in the Kings name, That all persons riotously assembled, should depart to their habitations, &c. The forme of which Proclamation you may see in the same Statute, and in P.Riots, 27. But the said Statutes are now expired.

Also any one Justice of Peace (by the first *Assignavimus* in the Commission) may cause to be kept and put in execution, all other Statutes made for the repressing of Riots, force, and violence: but therein hee must deale only according to the forme and order in such Statutes prescribed.

Two Justices.

13.H.4.7. But the ordinary power of punishing of Riots belongeth unto two Justices of Peace at least: and therefore the two next Justices of Peace which dwell neerest in the Countie, where any Riot, Assembly, or Rout of people shall be against the Law, together with the Sheriffe or under-Sheriffe of the Countie, upon complaint or other notice of the Riot, shall do execution of the statute 13.H.4.7. (sc. of all and every part thereof respectively, as to them is appointed) every one of them, upon paine of 100.li. And in default of the two next Justices, the other Justices of Peace of and within the Countie, (upon notice of such Riot) ought to doe

doe execution thereof, every one upon danger to be fined in the Star-Chamber : but the penalty of 100.li. is only to be laid upon the two next Iustices.

See the Case of *Drayton Bassett, hic antea, tit. Forcible Entrie* : where certaine Iustices of Peace which were not the next, nor did not dwell neereft to the place where the Riot was committed, and yet were fined in the Star-Chamber, upon the Stat. of 17.R.2.cap.8. But that Riot was notorious, for there were a great number assembled in the Manor house of *Drayton Bassett*, who did detaine the same forcibly.

And therefore if the Riot, &c. be great and notorious, whereof by common intendment every person may take knowledge, it is not safe for the Justice or Sheriffe, &c. to expect and stay till complaint thereof shall be made unto them, or that they shall have information or notice given them thereof, lest they incurre thereby the said penalty of 100.li.

Dyer 210.

If any other of the Iustices of the Countie (besides those two which are next) shall execute this statute, that shall excuse the two next Iustices, for that the Stat. giveth power herein to all Iustices.

P.R.30.

If one, or the next two Iustices shall come, and not the Sheriffe, or under-Sheriffe, such Iustices as doe come, shall be excused of the forfeiture of 100.li. but though the said Iustices shall be excused of the said forfeiture ; yet if there commeth but one Justice of Peace, he ought to arrest the Riotors, and to remove the force, and commit or bind over the Riotors, otherwise he is finable, &c.

And if there shall be two Iustices present, and neither the Sheriffe nor under-Sheriffe ; yet those two Iustices are finable, if they shall not do all that, which (without the Sheriffe or under-Sheriffe) they are authorized to doe by the said Statute.

Lamb 321.

But no Justice of Peace that dwelleth in another Countie is bound (upon the said penaltie of 100.li.) to execute the said Stat. of 13.H.4. although he dwelleth next to the place where the Riot is, and although he be in Commission of the Peace for the Countie where the Riot is, as it seemeth : for the words of the statute are, The Iustices which dwell neereft in every Countie where such Riot shall be, and not which dwell neereft to the place where the Riot shall be ; and yet it seemeth safe that such Justice dwelling out of the Countie, upon notice of such Riot, doe come into the Countie, and doe his endeavour to suppress the same Riot, and to execute the Statute, for that he is one of the Iustices of the Countie.

P.3.

If the Sheriffe or under-Sheriffe doe not come, the Iustices ought to send for them, as *M. Marrow* thinketh.

And

P. R. 30.

And some seeme to be of opinion, that if the Sheriffe or under-Sheriffe shall not come to the Iustices, being sent for to assist them, that then all the Iustices of Peace dwelling neere, or remote, shall be excused of the same penaltie of 100*li.* or of any other penaltie or fine; for that the said Statute doth give the Sheriffe or under-Sheriffe equall authority, and as it were joyne him in commission in the copulative with the Iustices of Peace. But others seeme to be of another opinion, *viz.* That if the Sheriffe or under-Sheriffe shall not come, yet the Iustices of Peace shall be fined if they come not, and arrest the Riotors, and doe not moreover proceed to doe therein all that, which (without the Sheriffe or under-Sheriffe) they are in any wayes authorized to performe.

Lamb. 322.  
Crompt. 63.

Now what the Iustices of Peace may or ought to doe therein (by force of this Stat. of 13. H. 4. 7.) without, or in the absence of the Sheriffe and under-Sheriffe, is worthy consideration, as being needfull for the Iustices of Peace to know, and safe for them to performe, as well for the speedy preventing of such present mischiefs as may happen to the Common-wealth by such dangerous assemblies, as also for their saving of the penalty of the law otherwise like to lie upon them.

Lamb. 313.  
322.

But herein I dare not determine, finding that others (of good judgement and experience) that have written hereof, have both seemed to doubt herein, and have written sparingly thereof.

And yet there is no doubt, but that the Iustices of Peace (without the Sheriffe or under-Sheriffe) upon all Riots may and ought first to goe to the place, and such Riotors as they shall see or finde riotously assembled, they may and ought to arrest them, and to take away their armour and weapons, and to remove and commit the Riotors, or may cause them to find sureties for the Peace, or good behaviour, and for want of such sureties may commit them to the Gaole; all which any one Iustice of Peace may doe.

P. Riots 2.

Crompt. 67. b.

Also two Iustices of Peace after the Riot committed (without the Sheriffe or under-Sheriffe) may and ought to enquire of the Riot, and if upon such enquire the Riot be found, the said Iustices may fine and imprison the offenders, as hereafter appeareth.

But whether two Iustices of Peace seeing a Riot, may record the same upon their owne view, without the Sheriffe or under-Sheriffe, and thereupon (without any enquire) may fine them for the same, and may commit them to prison till they have paid the same fine, is to be considered. I know the common opinion to be, that they cannot record the Riot (without the Sheriffe, or under-Sheriffe) for, by they (by the Statute



tute) the Sheriffe or under-Sheriffe are associated to the Justices of Peace, and have equall authoritie with them therein; and then consequently the Justices of Peace alone upon their owne view, without enquire, can neither fine them, nor imprison them for their fine.

Yet *Fineux* chiefe Justice saith, that \* this Statute of 13. H. 4. was made for the common profit of the Realme, and for a hastie remedie, and to avoid a present mischiefe like to happen, and therefore shall bee construed largely for the common good, and in furtherance and advancement of expedition of Justice.

14 H. 7. 9. b.  
See Co. 10.  
103. b. such  
a manner.  
\* M. Lambert  
thinketh

to bee the Statute of 34. E. 3. 1. that *Fineux* meant, rather then the Statute of 13. H. 4.

Also we see that any one Justice of Peace may doe all these things in case of a Forcible Entrie, *sc.* Any one Justice of Peace may come with the power of the Countie, if need bee, and may arrest the offenders, and may record the force by him viewed: and this record shall be a sufficient conviction, so that he may thereupon commit the offenders to the Gaole, and may fine them.

21. P. 6 f. 3.

Also this Statute of 13. H. 4. doth relate to the said Statute of Forcible Entries 8. H. 6. touching the conviction of offenders by the Record of the Justices.

Also if two Justices of Peace (without the Sheriffe) shall see a Riot, they may arrest them, and make a Record thereof, and the offenders shall be concluded by such Record, for that the view of the Riot is not to bee traversed. *Lamb.* 313.

First Inst. 9.  
17.  
14. H. 7. 8.  
Cramp. 63.  
196.

Also the Statute 34. E. 3. 1. seemeth to enable two Justices of Peace, to imprison and fine Riotors, and that without enquire, and then consequently, it seemeth they are to make a Record of the Riot.

P. Inst. 18.

And yet *quere* whether two Justices of Peace (upon the Statute of 13. H. 4. 7.) without the Sheriffe, may upon their view of a Riot, record the Riot, and without enquire fine the offenders, and imprison them till they have paid their fine (as convict by their view and Record) though this may seeme to be more for the Kings advantage, rather then to hazard the fine upon the finding it by enquiry. But it rather seemeth, that the Justices upon their owne view of a Riot, may record it, and commit the offenders, and then to certifie, or send the Record into the Kings Bench, where the offenders shall be fined: And this I take to be more warrantable, and safer for the Justices, if they shall not enquire thereof.

And now to the particulars of that which the two next Justices of Two Justices of Peace, with the Sheriffe or under-Sheriffe, must doe in execution of this Statute of 13. H. 4. 7. every one upon paine of 100. li.

P.R. 30.

And some seeme to be of opinion, that if the Sheriffe or under-Sheriffe shall not come to the Justices, being sent for to assist them, that then all the Justices of Peace dwelling neere, or remote, shall be excused of the same penaltie of 100*li.* or of any other penaltie or fine; for that the said Statute doth give the Sheriffe or under-Sheriffe equall authority, and as it were joyne him in commission in the copulative with the Justices of Peace. But others seeme to be of another opinion, *viz.* That if the Sheriffe or under-Sheriffe shall not come, yet the Justices of Peace shall be fined if they come not, and arrest the Riotors, and doe not moreover proceed to doe therein all that, which (without the Sheriffe or under-Sheriffe) they are in any wayes authorized to performe.

Lamb. 322.  
Crompt. 63.

Now what the Justices of Peace may or ought to doe therein (by force of this Stat. of 18*H.* 4. 7.) without, or in the absence of the Sheriffe and under-Sheriffe, is worthy consideration, as being needfull for the Justices of Peace to know, and safe for them to performe, as well for the speedy preventing of such present mischiefs as may happen to the Common-wealth by such dangerous assemblies, as also for their saving of the penalty of the law otherwise like to lie upon them.

Lamb. 313.  
322.

But herein I dare not determine, finding that others (of good judgement and experience) that have written hereof, have both seemed to doubt herein, and have written sparingly thereof.

And yet there is no doubt, but that the Justices of Peace (without the Sheriffe or under-Sheriffe) upon all Riots may and ought first to goe to the place, and such Riotors as they shall see or finde riotously assembled, they may and ought to arrest them, and to take away their armour and weapons, and to remove and commit the Riotors, or may cause them to find sureties for the Peace, or good behaviour, and for want of such sureties may commit them to the Gaole; all which any one Justice of Peace may doe.

P. Riots 2.  
Crompt. 67. b.

Also two Justices of Peace after the Riot committed (without the Sheriffe or under-Sheriffe) may and ought to enquire of the Riot, and if upon such enquire the Riot be found, the said Justices may fine and imprison the offenders, as hereafter appeareth.

But whether two Justices of Peace seeing a Riot, may record the same upon their owne view, without the Sheriffe or under-Sheriffe, and thereupon (without any enquire) may fine them for the same, and may commit them to prison till they have paid the same fine, is to be considered. I know the common opinion to be, that they cannot record the Riot (without the Sheriffe, or under-Sheriffe) for, say they (by the Statute

tute) the Sheriffe or under-Sheriffe are associated to the Justices of Peace, and have equall authoritie with them therein; and then consequently the Justices of Peace alone upon their owne view, without enquire, can neither fine them, nor imprison them for their fine.

Yet *Finew* chiefe Justice saith, that \* this Statute of 13. H. 4. was made for the common profit of the Realme, and for a hastie remedie, and to avoid a present mischiefe like to happen, and therefore shall bee construed largely for the common good, and in furtherance and advancement of expedition of Justice.

14 H. 7. 9 b.  
See Co. 10.  
103. b. such  
a matter.  
\* M. Lambert  
thinketh it

to bee the Statute of 34. E. 3. 1. that *Finew* meant, rather then the Statute of 13. H. 4.

Also we see that any one Justice of Peace may doe all these things in case of a Forcible Entrie, &c. Any one Justice of Peace may come with the power of the Countie, if need bee, and may arrest the offenders, and may record the force by him viewed: and this record shall be a sufficient conviction, so that he may thereupon commit the offenders to the Gaole, and may fine them.

21. P. 6 f. 5.

Also this Statute of 13. H. 4. doth relate to the said Statute of Forcible Entries 8. H. 6. touching the conviction of offenders by the Record of the Justices.

P. 1.

Also if two Justices of Peace (without the Sheriffe) shall see a Riot, they may arrest them, and make a Record thereof, and the offenders shall be concluded by such Record, for that the view of the Riot is not to be traversed. *Lambt.* 313.

*Fin. 100. 9.*  
17.  
14. H. 7. 8.  
*Cromp. 63.*  
196.

Also the Statute 34. E. 3. 1. seemeth to enable two Justices of Peace, to imprison and fine Riotors, and that without enquire, and then consequently, it seemeth they are to make a Record of the Riot.

P. 100. 18.

And yet *quere* whether two Justices of Peace (upon the Statute of 13. H. 4. 7.) without the Sheriffe, may upon their view of a Riot, record the Riot, and without enquire fine the offenders, and imprison them till they have paid their fine (as convict by their view and Record) though this may seeme to be more for the Kings advantage, rather then to hazard the fine upon the finding it by enquiry. But it rather seemeth, that the Justices upon their owne view of a Riot, may record it, and commit the offenders, and then to certifie, or send the Record into the Kings Bench, where the offenders shall be fined: And this I take to be more warrantable, and safer for the Justices, if they shall not enquire thereof.

And now to the particulars of that which the two next Justices of Peace, with the Sheriffe or under-Sheriffe, must doe in execution of this Statute of 13. H. 4. 7. every one upon paine of 100. li.



33. H. 47.

P. 12.

Posse Comi.  
tains.

2. H. 58.

P. 12.

1. First, they shall goe to the place in person, if they be able, where the Riot, &c. shall be.

And they shall take the power of the County (if need be) *sc.* they shall have the aide of all Knights, and other temporall persons under that degree, that be above the age of xv. yeares, and be able to travell: for all the Kings subjects that are in the County where a Riot, &c. shall be, being able to travell, must bee aiding and assistant to the Justices of Peace, Sheriffe, or under-Sheriffe (or other Commissioners) when they shall be reasonably warned, to ride or goe with the said Justices, and the Sheriffe, &c. in aide to resist such Riots, &c. upon paine of imprisonment, and to make fine and ransome to the King; which ransome shall be treble so much at the least as the fine, *Dyer* 232. Yet by others, by ransome, is intended that the party is to make his agreement with the King, *ad verum valorem omnium bonorum suorum mobilium.*

But Sir *Edw. Coke* L. 127. saith, that in legall understanding, a fine and ransome are all one.

Lamb. 309.

Crim. 54.

And it is referred to the discretion of these Justices, how many, or few, they will have to attend them in these businesses, and in what sort they shall be armed, weaponed, or otherwise furnished for it.

Lamb 310.

Cramp. 64.

Againe, it is not good for the Justices to assemble the power of the Countie, without certaine information, or knowledge of such riotous assembly: yet if upon false information of a riot, to bee at such a place, the Justices shall cause the power of the County to be assembled; the Justices shall be excused by reason of the information; and if without information, the Justices shall thinke, that such a riotous assembly is made in such a place, and shall assemble the power of the County to goe thither to arrest the Riotours, and when they come to the place, they finde a Riot there indeed, they must arrest and imprison the offenders; and shall be excused of the assembly made by them: but if they shall find no Riot there, then shall they be punished for making such an assembly of their owne heads, without information.

Arrest.

2. All such offenders as they shall finde there present, they shall arrest them, or cause them to be arrested, and shall remove the force, *sc.* shall commit to prison all the Riotors, and take away their weapons.

Also it seemeth, that all such as came in the company with such Riotors, or in the company of any of them, if that the Justices shall finde them there present (though they doe nothing, and though they came without any intent of their parts to commit any Riot, yet) they shall be arrested, imprisoned, and fined. See to this purpose in the title *Forcible Entry, cap. 77.*

Also.

Also all such Riotors, as the Justices shall meet in their way (riotously arrayed, and coming from the place) they may arrest and imprison them, for that they found them unlawfully assembled; but they cannot record any Riot by them done, for that they saw it not, yet they must afterward (as it seemeth) inquire thereof by a Jurie, that so the offenders may be fined &c. See more in this title. *Mar. Lett. 8. Cramp. 63.*

But if the Justices doe come and see the Riot committed, and after the said Riotors shall escape from the Justices at that time, yet the said Justices shall record it; but they cannot arrest them at any other time, except it be presently after and in fresh suit; neither can they fine the offenders, nor award any proceſſe against them upon that record which they shall make: and yet for that they saw the Riot (and these Riotors that be escaped, committing the riot) they shall record it. But that record shall not be kept amongst the records of the Peace, but the said Justices shall send the said record into the Kings Bench, that Proceſſe may from thence be made upon it, against those Riotors that bee escaped; where also the said offenders shall not be admitted to any Traverse, but must of necessitie make fine for their said offence. *Lamb. 311.*

If after the Justices and Sheriffe shall see the Riot, the said Riotors shall escape, and the Justices and Sheriffe shall record the same Riot, and then one of the Justices be put out of the Commission, or the Sheriffe, or one of the Just. shall happen to die, yet shall that Record be sent, or certified into the Kings Bench, by the other Justice and Sheriffe. *Lamb. 320.*

But if (after the enquire and before the Certificate, the Sheriffe, or) the Justices shall die, or be put out of the Commission, or that their authority doth cease by the death of the King, or otherwise, such Record cannot be certified without the Kings Writ of *Certiorari. Br. Record. 17. 64. & Lamb. 320.*

Also such offenders, as the Justices saw committing the Riot, though they shall escape from the Justices, yet the said Justices may after grant out their warrants for them, and send them to the Gaole, till they shall find Surety for their good behaviour. *13. H 7. Cramp. 196.*

If such offenders shall be departed before the coming of the Justices yet (upon certaine information of their being there) the said Justices may also grant out their Warrants for them, and may commit them, till they have found sureties for their good behaviour: Or rather the Justices shall doe well to proceed against them, by enquire, and so to fine the offenders for the King, &c. See more in this title. *34. E. 3. c. 1. P. Just. 18.*

Also in the execution of this arrest of the Riotors, the said Justices, &c. may justifie the beating, wounding, or killing of any the Riotors that *Lam 310. Cramp. 61. 158.*

that shall resist them, or that will not yeeld themselves to them. *Vide tit. Homicide, bis.*

Also the said Iustices may take from such Riotors, their Armor, Harnesse, and weapons, and shall cause the same to be prised, and to be answered to the King, as forfeited.

Record.

13 H. 4. c. 7.

P. I.

3. After the arrest made, the said Iustices, and Sheriffe, or under-Sheriffe, shall make a record in writing, of the said riot (*sc.* of all that which they shall see, and find done in their presence against the Law) without any other enquiry: And that their record is a sufficient conviction of the Offenders.

If two Iustices of Peace shall see any making of a Riot, they may command others to arrest the Riotors, and then make their Record thereof, and the offenders shall be concluded thereby. *Fitz. Just. of Peace, fol. 17.*

But if the Iustices of Peace doe not themselves see the Riot, they cannot make a Record thereof; but then they must enquire thereof.

If the Iustices of Peace, &c. going to see a Riot, another Riot shall happen in their presence; they may record this, and arrest and imprison the offenders.

So if the Riotors shall make a Riot upon the Iustices (and Sheriffe) that doe come to arrest them for their former Riot, they may record that also.

So if two Iustices of Peace (and the Sheriffe, or under-Sheriffe) shall ment for any other cause of service, or for any private businesse (as upon an arbitrement, or other like matter,) and a Riot shall happen to be done upon themselves, or in their sight, they may record it, and may arrest, and imprison the offenders.

9. H. 6. fo. 60

Crompt. 63. 64

And if the Iustices of Peace shall record a Riot, and upon examination of the matter after, it shall appeare to be no Riot; or that they saw it not, or that there was no Riot at all; yet the parties shall bee concluded thereby, and have no remedy (as it seemeth;) and therefore the Iustices shall doe well to be advised what they record. See *9. H. 6. fol. 60. Br. Judges 2. Fitz. Just. of P. fol. 17.*

Lamb. 311.

And againe, for that this Record of the Iustices and Sheriffe, is a sufficient conviction in it selfe against the offenders, therefore it ought to bee formall and certaine, as well for the time and place, as also for the number, weapons, manner, and other circumstances, because the parties be concluded thereby, and shall not be received to traverse or deny it in any point.

The forme of the Record, *vide hic, cap. 130.*

This



This Record ought to remaine with one of the said Justices of Peace; *Lamb. 312.*  
and shall not be left amongst the Records of the Sessions of the Peace, *& 365. 375.*  
it being made out of the Sessions, and not appointed to bee certified  
thither.

4. Also the said Justices of Peace (and none other Justice of Peace) Imprison.  
shall commit such offenders to the Gaole, there to remaine convict by *P. 1. 11.*  
their view, testimonie, and record (as in case of Forcible Entrie) untill *Lamb. 312.*  
they have paid a fine unto the King.

Also such commitment of the offenders to the Gaole ought to be done *Co. 8. 120.*  
presently.

And the power of the Countie ought to be aiding to the Sheriffe, or *Lamb. 310.*  
under-Sheriffe, for the conveying of them to the Gaole.

If the Justices of Peace, and Sheriffe, or under-Sheriffe, shall record *Cromp. 61.*  
the Riot, and shall not presently commit the Riotors to prison: or if  
they shall commit them to prison, and shall not record the Riot, they  
shall forfeit every of them 100. li. by the Stat. 13. H. 4. for that they have  
not done execution of the same Statute: for by the Statutes they shall re- *P. Force 2.*  
cord and commit; and againe, by the same statutes the offenders must be *P. Riots. 10.*  
as well imprisoned, as fined.

5. Also the said Justices of Peace (and none other) shall assesse the *Fine.*  
fines upon the said offenders; for they have best knowledge of the mat-  
ter, &c. *Co. 8. 41. a.* which fines by the statute 2. H. 5. 8. ought to be of good  
value, that out thereof the charges of the said Justices and other Officers *Lamb. 312.*  
may be borne, *sc.* their charges in going, carrying, and returning, &c. a- *357.*  
bout the suppressing and enquire of such Riots; of which charges pay- *Cromp. 161.*  
ment shall be made by the Sheriffe, by indenture thereof made betweene *P. 10.*  
him and the said Justices.

And yet such fines must be reasonable and just, and *secundum quantitatem & qualitatem delicti*, and not unreasonable and excessive (for *excessus in re qualibet jure reprobatur communi.* *Co. 11. 44.*) & so it is commanded  
by the statutes, 9. H. 3. 14. 3. E. 1. 6. 18. E. 3. 2. & 45. E. 3. 1. P. Inst. 1. & 18.

And the reasonableness of the fine shall be adjudged by the discretion  
of the same Justices of Peace. *Co. L. 56. b.*

Note also, that the fine assessed in this and such like cases, must not be  
imposed upon all the offenders joyntly, but must be assessed upon every  
offender severally. *Co. 11. 43. 44.*

And yet note, that in some cases a fine or an amerciamment shall be im-  
posed upon divers joyntly; (*sc.* sometimes upon a whole Countie,  
sometimes upon a Hundred, and sometimes upon a Towne, as for an e-  
scape of a murderer, &c. whereof see *hic postea*) but that is by reason of

the incertaintie of the persons, and for the infiniteness of their number.  
Co. 11. 43.

And the said Iustices shall cause the said fines to bee estreated into the Eschequer, that so the said fines may be levied to the Kings Majesties use; and then they are to deliver the offenders againe, as it seemeth: Or else the said Iustices may record such Riot by them viewed, and commit the offenders; and after certifie the record to the Assises or Sessions, or into the Kings Bench, as in case of a Forcible Entrie.

Enquire.  
13. H. 4. 7.  
P. 4.

6 But if the Riot; was not committed in the presence of the said Iustices of Peace; or that the offenders bee departed before the coming of the said Iustices, and Sheriffe, or under-Sheriffe, then the said Iustices, or two of them at the least, within one moneth, immediately after such Riot, Assembly, or Rout, shall enquire thereof, by the oaths of a sufficient Iurie (to be returned by the Sheriffe:) and the same Riot, &c. being found by such inquisition, the said Iustices must make a Record in writing, of such their enquire and presentment found before them, which record also is to remaine with one of the said Iustices: P. R. 29. See the forme thereof, *hic cap. 130.*

The forme of a precept to be made by the Iustices, to the Sheriffe, to returne a Iurie, &c. See *hic postea, cap. 130.*

The forme of such enquire or presentment. See also the title *Presidents, hic postea, cap. 130.*

Crompt. 62.

This enquire shall not be, but where the Riotors are gone before the coming of the Iustices: or where they had not the view of the Riot.

It is not necessarie that one of the Justices of Peace (which shall make enquire of Riot) be of the *Quorum.*

Lamb. 316.

Although the words of the Statute are, the same Iustices (sc. which came to see the Riot) shall enquire; yet if any other two Justices of Peace of that Countie shall doe it, that will suffice.

Also the Iustices of Peace, although they goe not to see the Riot, yet they may enquire thereof within the moneth after.

Lamb. 317.

Neither is it of such necessity, to have the enquire within the moneth, that for default thereof the presentment shall be void; for the Iustices of peace may enquire thereof at any time by force of their Commission: but if it be not within the moneth, then every of the two next Iustices are in danger to lose 100. pounds for it, And yet if these Iustices do charge the Iurie within the moneth, and doe give day unto them for to yeeld their verdict and presentment after the moneth, the Statute is not offended.

But yet (it seemeth that) the Iustices of Peace are not bound upon the penaltie

penaltie of 100.li. to enquire within the moneth, of all pettie Riots, but only of such Riots as are notorious and dangerous, and in the nature of Insurrections, or Rebellions.

At this enquire, the Sheriffe or under-Sheriffe ought to bee present with the Iustices of peace; but the Sheriffe or under-Sheriffe be now as Ministers only for the returning of the Iurie (for this enquire,) and be not herein associated with the Iustices, as they were before in arresting the Riotors, and recording their disorder, and therefore they are now to be spared from being Iudges therein: howbeit by this their presence they may helpe to espie the evill; and besides, it addeth force and credit to the Certificate. Lamb. 316.  
318.

If the Iustices doe assemble themselves, the Sheriffe and the Iurie, to make enquire of a Riot within the moneth, and the parties been agreed amongst themselves, so as none will sollicite the enquire, nor give in evidence for the King upon that Riot, yet ought the Iustices to proceed (*ex officio*) to make enquire of that Riot, seeing it may be that some of the Iurie may have knowledge of the Riot. Lamb. 317.  
Cromp. 62.  
P. 29.

And also the Iustices ought to make proclamation, that if any man will give evidence for the King concerning that Riot, or (generally) will informe the Kings Iustices of any Riots, Routs, &c. And thereupon some other persons may perhaps come forth to informe them therein.

But if (at the parties request) the Iustices shall dismisse the Iurie without enquire, they are finable in the Star-Chamber to the King for the same. P. R. 29.  
Cromp. 62.

And if the Iustices shall not proceed herein (*ex officio*) without some will give in evidence for the King, *quere*, if they shall not bee hereby in danger to lose the hundreth pound upon this Statute, for the reasons above said.

And it seemeth that the Iustices of Peace may justly binde to their good behaviour, the parties that first complained to them of this Riot, and have caused them to meet, and now will not prosecute the same for the King, but have agreed it.

After such enquire had, and the truth of the Riot found, the said Heare and Iustices have authoritie (by the said Statute) to heare and determine the same according to the Law, *viz.* they may make out their Warrant, or Processe, (*sc.* a *Venire facias*, *hic cap.* 132.) against the offenders under their owne *Teste* (thereby to cause the offenders to come in and answer,) and upon the appearance of the said offenders, the said Iustices may asseesse their fine, and may commit them to prison till they have paid their said fine, and may deliver them after payment of the same. determine.  
13. H. 4. c. 7.  
P. 2.  
Lamb. 317.



same fine, or upon sureties taken for it (which sureties ought to be bound by Recognizance : ) or otherwise they may receive their Traverse, and thereupon ( if the matter will so serve ) to discharge and dismisse them: *Br. Imp. 100* But then the said Justices shall doe well to send such indictment or inquisition found ( and such Traverse ) to the next Quarter Sessions, or into the Kings Bench, and there the Traverse shall be tried and determined according to Law, *P.R. 30.* *Lamb. 317.*

Note that all indictments, inquisitions, or presentments, taken and found before Justices of Peace, of any Riot, Forcible Entrie, or other thing against the Peace, may be delivered into the Kings Bench, by the hands of the same Justices of Peace, before whom the same was found ; or otherwise may bee removed from the said Justices of Peace, before the Iustices of the Kings Bench, by a *Certiorari* ; in both which cases, the Iustices of the Kings Bench may proceed to heare and determine the same.

Now by the Statute made 2. *H. 5. cap. 8.* the King is to beare the charges of the Justices of Peace, which shall execute the Statute of Riots. And therefore,

Concerning the fine so assessed by the Justices of Peace, the Iustices of Peace may thereout (as it seemeth) pay the charges of the said Iustices, and of the Iurie (which made the inquirie; and by whom the Riot was found) *sc.* for their dyet, and the Sheriffes fees, &c. And then they may bring the Record of this enquirie to the next Quarter Sessions of the Peace, and there deliver the same Record to the Clerke of the Peace, together with the residue of the money remaining of the fine, &c.

Also the Clerke of the Iustice which maketh up the Record of this inquirie, may have his fees out of that money : or else he may take of every offender *xii. d.* when they have paid their fine ; for so the Clerkes of the Peace use to doe.

Or rather the said Iustices are to be paid their charges ( in going, and continuing, in doing, and executing the said office ) by the Sheriffe, by Indentures made between the Sheriffe and the said Iustices ; whereof the Sheriffe upon his accompt in the Exchequer may have due allowance. 2. *H. 5. cap. 8.*

But when men are indicted of Riots ( or the like ) they will usually yeeld themselves, and pray to be admitted to their fine ( in which case the Iustices of Peace commonly doe asseffe but some small summe, or fine, and upon the payment thereof doe discharge the offender : ) and hereby the offenders are not imprisoned, ( which would worke more feare in such offenders, then such fine ) and therefore it is behovefull for the Iustices

Justices of Peace to use good care and discretion herein; for by the Statute 2 H. 5. cap. 8. the offenders are as well to be imprisoned, as fined; and it seemeth much more serviceable, and more agreeing with the intent of the Law. Besides, this fine called by \* divers old Statutes, Ransome, (or *Redemptio* in Latine) seemeth by the property of this word to imply, That the offenders ought first to be imprisoned, and then to be ransomed, and delivered in consideration of this fine. Lamb. 339. \* Marl. ca. 1. 2. 3. 4. Lamb. 336.

And these fines the Justices of Peace are now willed by the Statute (2 H. 5. cap. 8.) to put in greater sums then they were wont to be put in such cases; for the bearing of the charges of the Justices and other Officers, &c. as is before said.

At the Common Law a Riot was punishable, as a Trespasse, and as well the fine, as the imprisonment were at the discretion of the Judges: and in the same manner the Statute of 13 H. 4. enableth the Justices of Peace to punish such offenders. But now as well the imprisonment, as the fine of such offenders are to be increased by the said Statute, 2 H. 5. cap. 8.

And therefore where the Justices of Peace are remisse herein (i.e. in not sufficiently punishing such offenders by due fine and imprisonment) the Lords in the Star-Chamber, may (and doe often) assesse upon Riotors for the same Riot: (for which the Justices of Peace have formerly assessed a fine in the Countrey) a greater penalty, if they see cause; and yet in this case the offenders be not twice punished for one offence; but that part of the due punishment is inflicted at one time, and part at another. Crom. 63. P. R. 24.

So lastly, if the truth of the Riot cannot be found by the Justices of Peace upon such inquiry (being hindered by the perverseness of the Jurours, or by the unlawfull maintenance, countenance, or embracery of other persons that put themselves into the cause) then within one moneth next after the inquiry, the same Justices and Sheriff or under-Sheriff, shall certifie before the King and his Councell (i.e. into the Star-Chamber, or to the Body and Board of the Privy Councell, or into the Kings Bench Cromp. 63.) so much of the fact and circumstances thereof, as may by any wayes or meanes appeare unto them, with the certainty of the names of the principall offenders, upon paine of one hundred pound to every of the said Justices, Sheriff, or under-Sheriffe: and also the said Justices, with the Sheriffe, or under-Sheriffe, ought in the same Certificate, to certifie the names of such maintainers and embracers, with their misdemeanours; and of the time, place, and other circumstances, and the impediments, why the truth of the Riot, &c. is not found, upon pain

P. 15.

paine of forfeiture of twenty pound a piece to every of the Justices and Sheriff. *Crompt. 63. b. & 199. b.* The form of such Certificate; See *hic cap. 130.*

P. 3.

Lamb. 318.

\* But such  
Traverse &  
Certificate  
shall be  
sent into  
the Kings  
Bench, and  
there be  
tried.

The end of this Certificate is but onely to put and force the offenders to answer thereto, before the King and his Councell: and though the words of the Statute do make this Certificate to be of the force of a presentment of 12 men against the offenders, Yet such Certificate is no conviction, but that the offenders may traverse it, by the words of the same Statute. And so this Certificate is onely of the nature of a Declaration, or Indictment at the Common Law, and therefore it ought to comprehend the certainty of the time, place, persons, and other materiall circumstances.

If this Certificate be not made within one moneth after the inquiry, then it is not according to the Statute, and so not good to force the offenders to answer.

If two Justices of Peace, and the Sheriffe shall goe to see a Riot, yet any other two Justices of the County may make the inquiry, and then they altogether; or the first two, or the last two (with the Sheriffe or under-Sheriffe) may make Certificate thereof within the moneth after that inquisition taken.

Lamb. 320.

Crompt. 63.

Where there be severall Certificates made, or that the Certificate and the inquiry do disagree, then that shall be preferred which is best for the King.

If there shall be 20 parties to a Riot, and the Jury shall finde but ten of them guilty, yet the Justices may certifie that 20 committed that Riot, and this Certificate of the Justices shall stand good.

Also it seemeth, if any thing materiall happen to be omitted or left out in the inquisition, yet it may be supplied by this Certificate, and it shall stand good.

Lamb. 320.

If after the inquiry, and before the Certificate made, the Sheriff shall die, or one of the Justices be put out of the Commission, no Certificate can then be made, by the opinion of Master *Marrow*.

For the form of such Certificate, See, *hic cap. 130.*

Commis-  
sion:

2 H. 5. 8.

P. 6.

Upon the default of the two next Justices, and Sheriff, or Under-Sheriffe, for not executing the said Statute of 13 H. 4. 7. the party grieved may have a Commission out of the Chancery, to enquire aswell of the Riot, as of the defaults of the said Justices of Peace, and Sheriff, or Under-Sheriff.

2 H. 5. 8.

P. 9.

Also the Lord Chancellour of *England* as soon as he shall have notice of such a Riot, shall send the Kings Writ to the Justices and Sheriffe,

com-



commanding them to execute the said Statute of 13 H. 4.

And although that such Writ come not to the said Justices, Sheriffe, or Under-Sheriffe, yet they shall not be excused of the penalty of a hundred pound, afore said, if they make not execution of the said Statute. *Ibid.*

Also, if any assemblies of people in great number, in manner of insurrection, or other rebellious Riots, shall be done and committed, and that such offenders shall withdraw themselves, to the intent to avoid the execution of the Law, then, upon Certificate by two Justices of Peace and the Sheriffe of that County, by Letters under their Seals, to the Lord Chancellour of *England*; of the same Riot, and that the common voice and fame thereof runneth in the said County, the Lord Chancellour may make a *Capias* to the said Sheriffe, for the apprehending of such offenders; and after, if need be, a Writ of Proclamation, that the said offenders yielded themselves in the Kings Bench, at a certain day, upon pain to be convicted thereof.

2 H. 5 c. 9.  
8 H. 6 c. 14.  
R. 374.

*Rogues and Vagabonds.* CAP. 47.

**T**He benefit of this Law, and of the former Law, made for the setting to worke, and relief of the poore, are both of them worthy of the care of the Justices of Peace, and of their best endeavours, for the due execution thereof; for by them,

1 Idleness is very much repressed: idleness, which of it selfe is the root of all evill.

2 Infinite swarmies of idle Vagabonds are rooted out, which before wandred up and downe, to the great danger and indignity of our Nation.

3 Wee our selves are now compelled but to relieve the poore of our owne Parishes (whose conditions and estates we know,) and to a certainty of gift, wherewith wee are now taxed by our neighbours: whereas before we gave we knew not what, nor to whom; and many times to such as were ready to have cut our throats, if opportunity had served them.

In this title of Rogues, I have intermingled certain resolutions of the Judges, made upon the Statute 39 *El. cap. 4.* for the better understanding thereof: which resolutions you shall finde in Master *Lambert*.

Any one Justice of Peace may appoint all Rogues and Vagabonds, which shall be taken begging, wandring, or misordering themselves, to

One Justice  
39 *Eliz* 4.  
R. 374.  
be 1 *14* 7.

be stripped naked from the middle upward, and to be whipped till their body be bloody, 21 Jac. c. 28.

After such whipping, the said Justice of Peace shall make them a testimoniall under his hand and seal, testifying their punishment, and mentioning the day and place thereof, and the place whither they are to go, and what time they are limited to passe thither, &c.

The form of such a Testimoniall, *Vide hic cap. 24.*

P. Rog. 3.

All Rogues and Vagabonds are to be sent and conveyed forthwith, from Parish to Parish by the Officers (*sc.* the Constables of every of the same) the next straight way to the Parish where they were borne (if it may be known by the parties confession; or otherwise: Or, the place of birth being not known, then to the Parish where such person last dwelt by the space of one yeere; there to put themselves to labour: Or, (not being known where such person was born or last dwelt, then) to the Parish thorow which such person last passed without such punishment; and then the Officers of such Village or Parish, are to convey them to the House of correction of that Limit wherein that Village is, or to the common Gaole; there to remaine and be employed in worke till they shall be placed in service for one whole yeere; or not being able of body, till such person shall be placed in some Almshouse of that Countie.

39 Eliz. 4.

21 Ric. 28.

3 Caroli 4.

Resol. 6.

The Rogue, whose place of birth, or last dwelling cannot be known, having wife and children under seven yeeres of age, they must goe with the husband to the place, where they were last wilfully suffered to passe without punishment; where the children must be relieved by the work of their parents, though the parents be committed to the house of correction.

Again, by the Statute made 7 Jac. cap. 4. All such Rogues, Vagabonds, sturdy beggars, and other idle and disorderly persons, as shall be found and apprehended in the generall privy Search made by the Justices Warrant, &c. shall be brought before the said Justices at their said meeting, and shall be there punished; or by the said Justices Warrant shall be sent to the house of correction, there to be set on work, kept, and corrected, &c.

But here, first to describe you these manner of persons (*sc.* Rogues and Vagabonds) that you may the better know them.

A Vagabond (as one saith) is he which hath neither certain house nor stedfast habitation; but liveth idly, and loytering: A man (as another describeth him) *sine re, sine spe, sine fide, sine fede.*

A Rogue may be so called, *quia ostentim caput.* Minsh.

Or it signifieth an idle beggar that wandreth from place to place, without a lawfull Passport.

A Beggar, *Mendicus quasi manu dicens* (speaking with the hand) *Mos enim erat apud antiquos Egenum silentio manum extendere.*

And yet Vagabond, in its proper sense, is one that wandreth about: and a Rogue and a Vagabond seeme to be all one; for the Latine words, *vagus* and *vagabundus*, signifie the one and the other: So as whosoever wandreth about idly and loyteringly, is a Rogue or Vagabond, although he beggeth not. *quod nota.*

And more particularly, all these persons here under-mentioned, being above the age of seven yeeres; and offending as hereunder is mentioned, shall by our Laws be adjudged Rogues, or at least shall be punishable as Rogues. 39 Eliz. 40.  
P. Vag. 1.

1 All persons above the age of seven yeeres, going about begging, upon any pretence or colour whatsoever: yea, although they be licenced by any subject, except it be in the cases hereafter mentioned.

2 All idle persons going about the Countrey, either using any subtil craft, or unlawfull games, or being Fortune-tellers, or Juglers, or using any other like crafty science.

3 All Proctors, Patent-gatherers, or Collectours for Gaols, Prisons, or Hospitals, wandering abroad.

4 All Fencibles, Bear-wards, common Players of \* Enter-ludes, and \* Minstrels wandering abroad, 21 Jac. cap. 28. \* 1 Jac. 7.

5 All Pedlers, petty Chapmen, Tinkers, and \* Glasse men wandering abroad. 21 Jac. cap. 28. \* 1 Jac. 7. Especially if they be unknown; or have not a sufficient Testimoniall.

6 All wandering persons and common Labourers, being able in body using loytering, and refusing to work for reasonable wages; not having living otherwise then by labour to maintaine themselves, are Rogues. Resol. 10. And yet such persons as be of any Parish, and have able bodies to work, and be no wanderers abroad out of the Parish, though they refuse to work at such wages as is taxed or commonly given in those parts, are not to be sent to their place of birth or last dwelling, &c. but to the house of correction. See *1st. Poore.*

7 Poor persons appointed to ask reliefe in the Parish where they dwell, by the Overseers thereof; if they shall beg in any other sort then is appointed them; or shall beg by the High-ways, though in their own Parish. See 39 El. cap. 3. & *Lamb. 427.* Rogues.

And yet such persons are not to be sent to their place of birth, or out of the Town, except it be to the house of Correction.



So it seemeth of all other poor persons begging in the Parish where they dwell (without the appointment of the Overseers) they are to be sent to the house of Correction, *quare tamen.*

8 All persons wandring, and pretending themselves to be *Egyptians* or wandering in the habit and forme of *Egyptians*, not being Felons.

43 Eliz 3.  
P. Chap 33. 9 Souldiers or Mariners that shall beg (except as before *hic cap. 40.* *et hic postea*) or shall counterfeit any Certificate from their Generall, Governour, Captain, Lievtenant, Marshall, Deputy, or Admirall, shall be adjudged as common Rogues, and shal have the like punishment. But Souldiers and Mariners in divers like cases shall incurre the danger of Felony. See the title, *Felonies by Statute.*

39 Eliz 4  
P. V 28. 7. 10 Poore diseased or impotent persons, travelling to the Bathes for ease of their griefs; (and being licenced) yet if they beg; Or if such person be not licenced by two Justices; Or shall not return home again; according as they are limited by their said Licence; Or shall not be provided of necessary reliefe, &c. for their travell: They shall be punished as Rogues.

P. V 28. 3. 11 A Rogue that hath been punished according to this Statute, and hath a Testimoniall, if through his or her default they doe not accomplish the order appointed by the said Testimoniall, then are they to be whipped again as Rogues, and so as often as any default shall be found in them, &c.

Resol 13. 12 A Rogue, &c. that shall go with a generall Pasport, *sc.* which is not directed from Parish to Parish, is still to continue a Rogue, and may be punished by whipping again.

So also may such a Rogue, as shall carry his own Pasport without a guide: For by the letter of the Statute, they are to be sent, *sc.* conveyed from Parish to Parish by the officers of every the same.

3 Eliz 4.  
P. Labor. 8. 13 Servants departing out of service, (*sc.* forth of one City, Town, or Parish to another, or out of one Hundred or County, to serve in another) without a Testimoniall, &c. or which shall be taken with any counterfeit or forged Testimoniall, shall be whipped as Vagabonds.

1 Lat. 31.  
P. Plag 4. 14 Persons infected, or dwelling or being in any house infected with the Plague, that contrary to the commandment of any officer, shall wilfully go abroad and converse in company, shall be punished as Vagabonds.

7 Jac. 4. 15 So all persons being able to labour, and thereby to relieve themselves, and their families, that shall run away, or threaten to run away and leave their charge to the Parish, &c. 21 Jac. cap. 28.

But such offenders last mentioned are to be dealt withall by two Justices of Peace; *sc.* All such persons so running away, shall be taken to be incorrigible Rogues, and shall endure the pains of incorrigible Rogues, *sc.* they shall be (by two Justices of Peace) to the house of Correction, or to the Gaol, there to remain untill the next Quarter Sessions, and then he or she shall be there branded in the left shoulder with an hot iron, &c. And from the Sessions shall be sent to the place of their last dwelling, &c. *1 Jac. cap. 7.*

- And all such persons so threatening to run away (the same being proved by two sufficient witnesses upon oath, before two Justices of Peace of that Division) shall be by the said Justices sent to the house of Correction (unless such person can put in sufficient Sureties for the discharge of the Parish) there to be detained and dealt withall as a sturdy and wandering Rogue; and from thence to be delivered at the Quarter Sessions; or at the meeting of the Justices in that Division, made for a generall privy search for the apprehending of Rogues, according to this Statute of *7 Jac. cap. 4.* And are not otherwise to be delivered out of the house of correction.

But upon such their delivery, they are not to be sent to their place of Birth (as wandering Rogues) but to the place of their dwelling, if they have any; if not, then to the place where they last dwelt by the space of a year; &c.

And so of persons infected, &c. with the Plague, and punished as Vagabonds, as aforesaid.

No childe under the age of seven yeeres, shall be adjudged a Rogue *Children.* (within the Statute of *39 Eliz. 4.*) But it seemeth, such children being *39 Eliz. 4.* vagrant, must be sent to, and placed with the father, or husband of the *P. 1 Jac. 2.* wife: and if he be dead, then with the mother, (where she was born, or last dwelt by the space of one year.) And such children once thus settled or placed, must there remain, and not be sent from thence to their place of birth, though after their parents die, or run away, or that the said children grow above the age of seven yeeres, yea, and though the said children after beg and prove vagrant in that Towne, for there they must be set to labour. See *Resol. 4. 9. 10.*

Children above seven yeeres of age, going abroad vagrant, or begging *39 Eliz. 4.* in the Country, shall be punished as Rogues, and sent to their place of *Resol. 4.* birth, &c.

The wife being a vagrant Rogue, must be sent to her husband, though *Wife.* he be but a servant in another Town. *Resol. 5.*

If the husband or wife have a house (though as an Inmate) and either *Resol. 3.* of.

of them Rogue about, they are to be sent to the Towne where that house is.

*Relief.*

No man is to be put out of the Towne where he dwelleth, nor to be sent to their place of birth, or last habitation, but only a vagrant Rogue, *sc.* such as wander abroad in the Country; and not such as are vagrant, or do beg in the same Town where they dwell.

Such as their estates of their houses be expired, and servants whose time of service is ended, they shall not be put out of the Towns where they last dwelt, or served, &c. *Vide tit. Poore.*

Who may beg.

39 *Eliz.* 4.  
P. *Vag.* 14.

The Justices of Peace (dwelling in or neer the place where any Seafaring man suffering shipwrack, shall land) may make a testimoniall under his hand to such person (not having wherewith to relieve himself in his travell homewards) setting down in such testimoniall, the place, and time, where and when he landed, and the place of his birth or dwelling unto which he is to passe, limiting him therein a convenient time for his passage; which person (without the danger of this Law) in his direct passe, and within his time in such his Testimoniall limited, may ask and receive necessary relief.

Persons suffering shipwrack.

Souldiers, &c. from Sea.

39 *El.* 17.  
P. *Mar.* 6.

The Justices of Peace in or neer the place where any poore, idle, and wandring Souldier or Mariner (comming from the Seas, or from beyond the Seas) doth land, ought upon request, to give him a Testimoniall under his hand, licensing him thereby to passe the next and direct way to the place whither he is to repaire; expressing therein the time and place of such his landing, with the place of his dwelling, or birth, to which he is to passe, and to limit him a convenient time for his passage thither: and such person pursuing such licence, may aske and receive necessary reliefe, without the danger the danger of Law, 21 *Jac.* cap. 28.

Rogues whipped.

39 *El.* 4. 4.  
P. *Vag.* 3.

But now *quere* of these persons, and see *infra*.  
Also one Justice of Peace, (or the Constable, with the Minister, and one other of the Parish) after the whipping of a Rogue, according to the Statute may make the said Rogue a Testimoniall under their hand and seale; for the conveying of such Rogue according to this Statute of 39 *Eliz.* 4.

And yet such Rogues may not beg in their travell, neither may the Constable of the Parish thorow which they passe, nor any other person, give them any relief (as it seemeth) for that were contrary to the Statute 1 *Jac.* cap. 7. and a forfeiture of 10 shillings. But now for that after so many yeets (since the making of these Statutes) they will not be reformed of their Roguish life, they are rather to be dealt withall as incorrigible Rogues, *sc.* to be carried by the Constable before the next Justice of Peace,



Peace, and then by Warrant from two Justices to be sent to the house of Correction, or to the Gaole there to remain untill the next Quarter Sessions, &c. See Statute 1 *Iac. 7.* and the directions of Sir Francis Harvey at Summer Assises, 1630. *hic postea.*

And as for the Souldier or Mariner (especially such as are sick, hurt, or maimed) they now are usually, or may be, relieved with money by the Treasurers of every County where they come, viz. with such convenient sums, as may carry them to the next County; and this is by a latter Law, and therefore now it may seem unfit, that either the Constable should relieve them, or suffer them to beg or aske reliefe in their Towns, for so the Country shall be double charged towards their reliefe, sc. in paying to the Treasurer towards their reliefe, and again in giving them at home at their doors, 21 *Iac. c. 28.*

So that I doe not finde, that any one or more Justices of Peace may or can in any case licence any man to beg, or aske reliefe at all; but onely may make a Testimoniall or Licence in the two first former cases sc. to such as suffer shipwrack, and souldiers, or Mariners comming from the Seas, to passe from place to place; and in those two cases onely the Law tolerateth them to ask and receive necessary reliefe, as aforesaid. For I observed before, that poore diseased persons travelling to the Baths (though licenced by two Justices of Peace) yet they might not beg; and besides must be provided of maintenance for their travell. See more in this title before. 43 *Eliz. 3.*  
*P. Cap. 20.*

Likewise poor prisoners delivered out of Gaols, may in no wise beg. *Stat. 39. Eliz. c. 4.*

I observe further, that (by the Statute 39 *Eliz. cap. 3.* though it be now expired) no person whatsoever, might goe wandering abroad and beg, in any place wheresoever by licence or without, upon pain to be taken as a Rogue.

And therefore *quare*, of such Briefs and Licences as lately have usually come from or in the name of the Lord Major of London, licencing poor persons to travell, and to ask or beg reliefe in their travell, and by generall Passports, not directing them from Parish to Parish. See more in this title after *Resol. 13.*

And yet any one Justice of Peace may licence Labourers in hay and harvest time, to passe from one Country to another to work, but not to wander, or beg: See the title *Labourers.* 5 *El. 4.*

And so, any two Justice of Peace may make a Testimoniall to Servingmen, (or other servants, as it seemeth) departing from their Masters, but such persons under colour thereof may not wander Two Justices.  
See 5. *El. 4.*  
*P. Lab. 7.*

up and downe idly, nor beg : See the Title *Labourers*.

39 Eliz. 4.  
P. 17<sup>th</sup> 4.  
1 Jac. 7.

Any two Justices of Peace of the Limit where any incorrigible Rogue shall be taken (the one being of the *Quorum*) may commit such Rogue to the house of Correction, or to the Gaole, there to remayne untill the next Quarter Sessions of the Peace, and there to be dealt withall as incorrigible Rogues, according to the Statute, *Jac. cap. 7*. See *hic antea*.

P. 17<sup>th</sup> 4. II  
39 Eliz. 4.

Now these incorrigible Rogues be such as shall either appeare to be dangerous to the inferiour sort of people; or such as will not be reformed of their roguish kind of life.

Of the first sort are such as shall offer any violence, or shall use any threatening speeches, or other like misdemeanours towards any person.

Of the other sort seem these which follow, and such like.

1. Such as having had punishment, and thereupon sent to their place of birth &c. and there settled according to the Law, shall notwithstanding fall to their life again.

Resol. 1.

2. A Rogue that affirmeth that he was born in such a Town, in such a County, and is sent thither, if he were not born there in truth, hee is to be said an incorrigible Rogue, and is to be sent thence (by two such Justices as aforesaid) to the house of Correction in that County, and if there be none, then to the Gaol, untill the next Sessions, there to be dealt withall according to the Statute.

Resol. 2.

3. The same course is to be observed (if it appear not where hee was born) if he untruly affirme that he was last dwelling in such a Town and County, by the space of a yeer, and was not.

1 Jac. 4.

All persons being able to labour, and thereby to relieve themselves and their families, that shall run away out of their Parishes, and leave their families or children to the Parish, shall be deemed and punished as incorrigible Rogues. Their punishment see, *hic antea*.

7 Jac. 4.

Also all persons being able to labour, as aforesaid, that shall threaten to run away, and leave their families, as aforesaid, it being proved by two sufficient witnesses upon oath, before any two Justices of Peace of that division, shall be sent by the said Justices to the house of correction, there to be dealt withall and detained as sturdy and wandring Rogues, &c. unlesse such persons shall put in sufficient sureties for the discharge of the Parish. See *hic antea*.

39 Eliz. 4.  
P. 17<sup>th</sup> 4.

All such persons as shall in any wise disturbe, or hinder the execution of the Law, made 39-*Eliz. cap. 4*. or any part thereof, concerning the punishment, and conveying of Rogues; or shall make rescous against any officer or person authorized for the execution of this Statute, shall

for-

forfeit for every such offence five pounds, and shall be bound to the good behaviour; and any two Justices of Peace may binde such offenders to the good behaviour, and may also by Warrant under their hands and seals, cause to be levied by distresse and sale of the offenders goods, the said sum of five pound upon the confession of the offenders, or upon the testimony of two sufficient witnesses, before the said Justices, of such offence. P. vag. 5. 11

Within the compasse of which words and Statute, seeme to be these offenders and offences which follow:

1 To send Rogues by a generall Passport, without conveying them from Parish to Parish, is a let to the conveying of Rogues, according to the Statute, and so a forfeit of five pound upon them that shall so send them, and they are to be bound to the good behaviour. Resol. 13.

2 Note that all Rogues are to be conveyed to their place of birth, &c. by the Constables of every Parish (sc. from Constable to Constable, the next strait way.) And therefore if the Officer (sc. the Constable) of any Parish will not receive a Rogue, to convey him to the place where he was born or dwelt, this is a forfeiture of five pound in such Officer that shall not receive the party, to convey him or her, and hee is to be bound as aforesaid, to his good behaviour. Resol. 14.

3 So it seemeth, if the Constable or other person, which shall convey a Rogue towards his place of birth, &c. if he shall not deliver to the Constable of the next Parish.

4 If any be sent to a Town whereto he ought to be sent, and is refused, being a sturdy or an impotent Rogue, the persons so refusing, shall forfeit five pound, and may be bound to the good behaviour. Resol. 12.

Note that he which is to be sent, is to be delivered or offered to the Church-wardens and Overseers, and if they shall refuse him, they shall forfeit five pound as aforesaid. Resol. 13.

Also any two Justices of Peace, (by Warrant under their hands and seals) may cause to be levied by distresse and sale of the offenders goods, all fines and forfeitures appointed, or to grow by this Act of 39 Eliz. 4. or by the Statute of 1 Jac. cap. 7. by conviction of any person, for any offence here under-mentioned: (But such conviction must be, either by confession of the offender, or by the testimony of two sufficient witnesses before the said Justices.) As namely:

1 The Minister which shall not keep a Register-book, and therein enter the substance of every Testimoniall made for the conveying of Rogues (punished in his Parish) shall forfeit for every default five shillings. P. vag. 3.



2 The Constable which shall not doe his best endeavour for the apprehending, punishing, and conveying of all Rogues, which shall be found in their Parish shall forfeit for every such default ten shillings.

1 *1ac. 7.*  
P. *Vag. 5.* 3 The Constable which shall not cause to be punished, and to be conveyed (according to the Statute of 39 *Eliz. 4.*) all such Rogues as shall be brought or sent to him by any of his Neighbours, shall forfeit for every such default, 20 s.

Note, that the Constable is to execute the said punishment of whipping of Rogues, either himselfe, or by some other by his procurement. See to the like purpose in the title *Trespasse. c. 57.*

1 *1ac. 7.*  
P. *5.* 4 Every person shall apprehend, or cause to be apprehended, such Rogues as hee shall see or know to resort to his house, to beg or receive any almes, and him or them shall carry, or cause to be carried to the next Constable, or else shall forfeit for every such default, 10 s.

*Master Perkins* in his Exposition of the eighth Commandement, *Thou shalt not steal*, saith, That hee breaks that Commandement, which being lusty, lives by begging. And so of him that shall relieve, feed, or cloath stout and lusty Rogues and Beggars. *Perkins* pag. 91. & 749.

39 *Eliz. 4.* 5 Every person that shall willingly bring or convey in any Vessell, out of *Ireland* or the Isle of *Man*, into this Realm, any Rogue, or any such as shall be like to live by begging, &c. shall forfeit for every such person so brought over 10 s.

39 *Eliz. 4.*  
1 *1ac. 7.*  
P. *11.* All (or the most part of) which fines and forfeitures appointed, or to grow by these Acts 39 *Eliz. 4.* & 1 *1ac. 7.* are to be employed to the maintenance of the houses of correction, or relief of the poor, where the offence shall be committed, at the discretion of any two Justices of Peace (as it seemeth) of the same limit.

39 *Eliz. 4.*  
P. *11.*  
P. *Vag. 12.* Note that any two Justices of Peace (whereof one to be of the *Quorum*) have power to heare and determine all causes that shall growe or come in question, by reason of the Statute made for the punishment of Rogues. 39 *El. 4.*

At Summer Assises held at *Royston* for the County of *Cambridge*, Anno Dom. 1630. *Sir Francis Harvey* delivered these rules or directions, upon the Statutes made against Rogues: viz.

1 That now (after so long time since the making of the Statute of 39 *Eliz.*) no Passe is to be allowed for these wandring people, and that such of them as doe passe or travell, though with any Passport, yet are to be punished as Rogues, notwithstanding such their Passport. And here-

herewithall agreed Sir Nicholas Hyde at Cambridge Assises, Anno Domini 1630.

2 That if any Alehouse-keeper, or other person, shall but lodge a Rogue, this is a relieving of them, and contrary to the Statute of 1 Jac. and is a forfeiture of 10 s.

3 That giving of money by a Constable, to a Rogue, is a relieving of a Rogue within this Statute, and a forfeiture of 10 s. *Hac illa.*

For the way to rid the Countrey of these Rogues, is to give them either due punishment (and that often, yea, at every Towne, if they will not be reclaimed) and to keep them from lodging and other reliefe, as much as may be; or else to send them to the Gaol, as incorrigible Rogues. (*Vide hic antea.*) For punishment is all the Charity that the Law affordeth them.

Any two Justices of Peace may licence diseased persons to travell to *Bath or Buxton*, for the ease of their griefs; so as they be provided of necessary maintenance for the time of all their travell, &c. but they may not beg. See hereof more in this title before. 39 Eliz. 4.  
P. 172. 7.

The Justices of Peace, or the more part of them, within their Divisions twice in every year at the least, shall meet for the execution of the Statute, 7 Jac. 4. against Rogues and Vagabonds, sturdy Beggars and other idle and disorderly persons. And some foure or five days before their meeting, they shall by their Warrants command the Constables of every Hundred, Town, and Parish, &c. within their severall Divisions, to make a generall privy search in one night, for the apprehending of all Rogues, and wandring and idle persons, to be brought before them at their said meeting, there to be examined of their idleness, and there to be punished: or otherwise by Warrant of such Justices to be sent to the house of Correction within the said County: which sending to the house of Correction shall be by the said Constables who apprehended them (yet at the charge of the Hundred. But by whom they shall be punished and whipped (*quare*) it seemeth by the Officers of the Towne where the Justices so sit or meet; and thereupon to be sent to their place of birth, &c. 7 Jac. 4.  
21 Jac. 20.

Also at the same meeting, the Constables of every Hundred and Parish, are to appeare before the said Justices, and there shall give an account (upon oath) in writing, and under the hand of the Minister of every Parish, what Rogues they have apprehended as well in the same search, as also between every such their meetings, and how many they have punished, or conveyed to the house of Correction. 7 Jac. 4.

Also the said Justices at their said meetings, may assesse reasonable fines 7 Jac. 4.

finer (being not above 40 s.) upon any the Constables, as well for their neglecting to performe this service; *sc.* in not appearing or giving account, as aforesaid, as also for the neglecting the safe conveying of Rogues, and other idle and disorderly persons, sent to the house of Correction by Warrant from the said Justices of Peace: which conveying of such persons to the house of Correction, must be at the charge of the Hundred as is aforesaid.

7 *lat. 4.*

Also the said Justices at their said meetings, may deliver such persons as they have formerly sent to the house of Correction; from such their meetings.

## Robbery. CAP. 48.

One Justice.

27 *Eliz. 13.**P. H. and**Cry. 8. 10.**Co. 7. 7.*

**A**fter a Robbery committed, the party robbed shall not have his action upon the Statute against the Hundred; except he shall with all speed convenient, give notice of the said Robbery, to some of the inhabitants dwelling in some Towne, Village, or Hamlet, neere to the place where such Robbery was committed: And also except hee shall commence his suit or action within one yeere next after such Robbery committed: And also except he shall first be examined upon his oath (within 20 days next before such action brought) by some one Justice of Peace (of the County where the Robbery was committed) dwelling within, or neer to the said Hundred, where the Robbery was done, whether he doth know the parties that committed the said Robbery, or any of them: and if hee knoweth any of them, then also (before such action brought) he shall be bound before the same Justice by sufficient Recognizance, to prosecute effectually the said offenders, by indictment, or otherwise, according to the due course of Law. *Vide Plo. 128.*

*In action sur le Statute de Winchest. ceux points ont esse Resolue in Communi Banco: sc.*

1 *Le party Robb. doner notice speedely al prochain village, ou al ascun inhabitant prope al Robbery: & le declaration in tiel cases, est que le plt. immediate apres le Robbery fait, Levie Hue & Cry, & done notice a le ville ou le Robbery fuit fait, & alibi per totum Hundredum al inhabitants, &c. Plo. 128.*

2 *Le party doit commence son suit deins 1 ann. apres le Robbery, & apres le 40 jours puis le Robberie.*

3 *Le party Robb. doit esse examin sur son Serement, devant le Justice de P. sil nad. conuzance del Robberie, &c.*



4 *Si mon servant ou Carrier que carrie mes bienz soit Robb. cestuy de que les bienz fuer prises serra examin, & jure devant le Justice de P. & nemy le owner del bienz : & si le servant ou Carrier ne voel esse examin, l'owner n'ad remedié.*

5 *Que home poit esse jure in son proper cause, sc. quant argent son servant avoit.*

After a Robbery committed, and notice thereof given, as aforesaid, the whole Hundred must answer the losse, if the Robbers be not taken within forty days. And if the Robbery be done in the division of two Hundreds, both the Hundreds, and the Franchises within them shall be answerable for the Robbery done, and also for the damages. *Stat. Wmch. cap. 2.* 27 El. 13.  
P. Hwy and  
Cry 45.

And yet for that the party robbed hath his recovery and execution against some one or few persons of that Hundred, therefore for a contribution to be yielded from the residue of the said Hundred, upon complaint made by the parties against whom such recovery and execution is had; any two Justices of Peace (the one being of the *Quorum*) being of the same County, and inhabiting in or neer the same Hundred where such execution shall be had, may assesse and tax according to their discretion, proportionably, all and every the Townes, Parishes, and Hamlets, as well of the same Hundred (where the said Robbery was committed) as also of the Liberties within the said Hundred, towards an equall contribution to be had for the reliefe of the parties charged: The which taxations or summes the Constables of every Towne, shall within their Town, Parish, or Limits, rateably and proportionably tax and assesse upon every inhabitant and dweller in every such Towne, Parish, Village, or Hamlet for and towards the payment of such taxation and assessement so made by the said Justices upon such Towne, &c. And if any inhabitant of such Towne, &c. shall refuse to pay the said taxation, so by the Constables taxed, then it shall be lawfull for the said Constables, and every of them to distreine for the same, &c. And the same distresse to sell, and the money thereof coming, the said Constables must deliver over to the same Justices, or to, one of them, within ten days after collection: All which the said Justices shall deliver over (upon request) to the parties charged, to whose use the same was collected. 27 Eliz. 13.

Note that the inhabitants of any other Hundred (within the same *Ibid.* County where the Robbery was committed, or within any other County, with the Franchises within the Precincts of such Hundred) wherein negligence, fault, or defect of pursuit, and fresh suit after Huy and Cry made,

made, shall happen to be shall answer and satisfy the one moiety or half of all and every such sums of money, and damages, as shall be recovered, or had against the Hundred in which the Robbery was done.

And the like taxation, assessment, levying and payment, as aforesaid, shall be had and made for a contribution within every Hundred, where there was any negligence, fault, or defect of pursuit, and fresh suit after Huey and Cry, viz. if upon suit any recovery and execution of any money, or any damages shall be had against some one or few persons of that Hundred, where such default was (towards the ease of the Hundred, where the Robbery was done) upon complaint made by the parties so charged, to any two such Justices of Peace; the said Justices may make the like assessment, &c. towards the relief of the said parties so charged.

27 Eliz. 13.  
P. H. 7. and  
C. 7. 6.

C. 7. 6.

Note, that if any man be robbed in his house, the Hundred shall not be charged therewith, whether it were done in the day or in the night.

C. 7. 6.

Also a Robbery done in the night shall not charge the Hundred: but yet if it be in the day time, or by day light, though it be before Sun-rising, or after the Sun-setting, the Hundred shall answer for it.

27 Eliz. 13.  
P. H. 7. &c.

C. 7. 7.

If upon pursuit any one of the offenders be apprehended, the Hundred shall not be charged, although the residue of the offenders happen to escape; but pursuit without apprehending some one of the Robbers, is no excuse.

Crom. 179.

If the party that was robbed shall himselfe take any of the Thieves after Huey and Cry made, this shall excuse the Hundred.

Although that one of the Thieves be taken, yet if Huey and Cry be not duly made, the Town where the default is, shall be amerced; But the party robbed shall have no remedy for his money (of the Hundred) in regard that one of the Thieves is taken; and this is by force of the Statute 27 Eliz. whereas the Amerciament is by force of the Statute of Winchester.

Dyer 3. 01.  
P. R. 155.

It seemeth by my Lord Dyer, Anno 21 Eliz. that the Statute is satisfied, if the names of the offenders be destroyed, so that they may be indicted & out-lawed; *quare inde*, for the words of the Statutes of 13 Ed. 1. and 28 Ed. 3. are, That the Countrey must answer for the bodies of such offenders. *Winch. 13 Ed. 1. cap. 2. & Stat. 28. E. 3. c. 11.*

Note, the party robbed must bring and commence his action within 20 dayes next after his examination taken before the Justice of Peace. 36. Eliz. *Dew's Case.*

Also the Justice of Peace must be abiding within the Countrey, at the time of the examination taken by him, as it seemeth; for the Justice of Peace

Peace being out of the County, is but as a private man, and hath no authority to take such examination. See the title, Justices of Peace, *Hic cap. 6.*

If a man be robbed in *Middlesex*, and maketh Hue and Cry freshly into *Essex*, if the Townes adjoining doe not according to the Statute of *Winchester*, the party robbed may have his action of debt; in the one County, or the other, by *Fincham*, 15. *Ed. 4.* 18. *B. Ditt.* 104.

High-ways leading from one Market Towne to another, shall be enlarged, so that there be neither dike, underwood, nor bush, whereby a man may lurk to doe hurt, within two hundred foot of the one side, and of the other; and if by default of the Lord that will not amend the ways as aforesaid, any robberies be done therein, the Lord shall be answerable for the robbery; and if a Park be near the high-way, the Lord must set his Park 200 foot of each side from the way, as aforesaid; or else must make such a wall dike, hedge, (or pale) that such offenders may not passe to and fro there, *Winch.* 13. *Ed. 1 cap. 3.*

And every Justice of Peace may cause such High-ways to be enlarged and cleansed as aforesaid; See, *huc amen. tit. High-ways.*

Sacraments. C. 49.

IT seemeth that three Justices of the Peace (one of them being of the *Three Ju-*  
*Quorum*) may out of the generall Sessions, take information and ac-  
 cusation (by the oaths of two honest persons) against such as shal deprave, *Ed. 6. r.*  
 or unreverently speak of the Sacrament of the body and blood of our *P. Jus. 8.*  
 Lord and Saviour Jesus Christ against the Statute, &c. And may bind  
 the accusers (and such other witnesses as were by) by recognizance (in  
 five pound a piece) to give in evidence at the day of triall: But Master  
*Lamb.* 351.  
*Lambert* maketh a quere hereof.

Sabbath day, or Sunday.

NO Carrier with any Horse, nor Waggoner, Carter, nor Wainman,  
 with any waggon, cart, or wain, nor any Drover with any cattell,  
 shall travell upon the Sunday, upon paine that every person so offending  
 shall forfeit 20 s. for every such offence. 3. *Car. 1.*

If any Butcher shall kill, or sell any victuall upon the Sunday, he shall  
 forfeit for every such offence, six s. 8 d. *Ibidem.*



One Ju-  
stice.

Any one Justice of Peace (Major, or head Officer of any City, or Towne Corporate) within their Limits, upon their owne view of any of the said offences, or upon prooffe thereof upon oath by two or more witnesses, or upon the confession of the party offending, may make their Warrant to any Constable or Church-warden (within their severall Limits, where such offence shall be done) to levy the same forfeitures by Distresse, and sale of the offenders goods, rendering to the party the overplus. *Ibidem.*

Every Justice, and head Officer aforesaid, have power to minister an Oath to such witnesses. *Ibidem.*

All the said forfeitures shall be employed to and for the use of the poor of the Parish where the offence shall be committed. *Ibid.*

And yet any such Justice, or other head Officer, out of the said forfeitures, may reward any person or persons that shall inform, or otherwise prosecute any such offender, according to their discretions, so that such reward exceed not the third part of the forfeiture. *Ibid.*

Provided that no person shall be impeached by this Act, unless he be questioned thereof within six moneths after the offence committed. *Stat. 3. Caroli Regis c. 1.*

There shall be no unlawfull exercises &c. used upon the Sabbath day, *Hic. c. 23.*

Against Faires, and buying and selling upon the Sabbath day. *Hic. cap. 27.*

6 Justices.  
23 Eliz. 9.  
P. 16.

Co. 5. 100.  
§ 10. 138.  
140.

Co. 10. 143.

**S**ix Justices of Peace in the Shire where any Laws and Ordinances of Sewers are to be executed, (two being of the Quorum) within their Limits, may execute the said Laws and Ordinances of the Commissioners of Sewers, for one yeere after the expiration of any such Commission, except a new Commission be published in the mean time.

Note, that the proceedings of the Commissioners of Sewers, ought to be limited and bounded with the Rules of Law and Reason, and according to the ancient Statutes and Ordinances. See, *hic. c. 6.*

Now these ancient Statutes concerning Sewers, are many, and are of three sorts.

The first sort consist in defending, and repairing of the Walls, Banks, and Sewers, &c. of this sort are the Statutes made 9 H. 3. c. 15. & 16. 6 H. 6. c. 5. 18 H. 6. c. 10. 23 H. 6. c. 9. 12 E. 4. c. 6. 4 H. 7. c. 1. & 6 H. 8. c. 10.

The

The second sort consist in pulling down, and removing Nufances, &c. as the Statutes made, 9 H. 3. c. 23. 25 E. 3. 4. 45 E. 3. 2. 1 H. 4. 12. 9 H. 6. c. 9. & 12 E. 4. c. 7.

The third consisteth of both sorts, *sc.* as well in repairing the banks, &c. as in pulling down Nufances, &c. And of this sort are these Statutes following, *viz.* 23 H. 8. c. 5. 25 H. 8. c. 10. 3 E. 6. c. 8. 13 E. 1. c. 9.

The inconveniences which ensue by these Nufances, and especially by the new levying or inhancing of Weares, Mills, Stanks, Fish-garshes, Locks, Stakes, Kidles, and Flood-gates, are these: *sc.* The common passage of Ships and Boats in the great Rivers, as also Meddows, Pastures, and arable grounds adjoyning to the Rivers, be greatly disturbed, drowned, wasted, and destroyed, many people perished, and the young fry of fish destroyed. See 1 H. 4. c. 12. 4 H. 4. c. 11. & 12 E. 4. c. 7.

The forme of the Commission of Sewers; the authority of the Commissioners, as also the form of their oath, you may see at large in the Statute 23 H. 8. c. 5. & P. 2. 4.

Note that the King by the Common Law, may award his Commission of Sewers, for the amending of the Sea-banks, and for the repairing, amending, and scouring of other Banks, Sewers, Cutters, Ditches, Pits, and Trenches; so as the fresh waters may have their direct course. *F. N. B. 113. 4.* And see there the form of that Commission, and the proceedings thereupon.

These Commissioners cannot make any new great River, neither can they make new inventions (as artificiall Mills to cast out the waters, or such like, but such new Rivers, & new inventions (if they be for the public good) ought to be made by Parliament: And yet the making new of an ancient bank or Sewer in a place more fit, and with some little alteration and distance, and upon necessity, seemeth to be warrantable.

These Commissioners cannot cast down any Mills, Causes, or Stanks, &c. erected before the time of Ed. 1. but onely may cause them to be abated, if they be raised above their ancient heighths. *Co. 10. 138.*

These Commissioners ought to tax none towards these reparations, &c. but such as have prejudice or losse by the Nufances or Defaults, and which have benefit by the amending or removing of them. *Co. 10. 141.* See the Statute and form of the Commission, 6 H. 6. c. 5.

Also these Commissioners ought to tax all that be in danger to be injured by the not repairing &c. and that according to their land, &c. *Co. 10. 143.* And not to tax him only whose grounds lie next adjoyning to the River, &c. For, *Qui sentit commodum, sentire debet & onus.*

Note that in all cases of taxing or rating by these Commissioners, it

co. 9. 10. 6. ought to be proportionable, and according to the quality, and yearly value (of the lands, tenements, rents, commons, and fishings of the persons chargeable,) and not according to the quantity or content thereof.

co. 9. 124. 4.  
co. 10. 139.

And the yearly value shall be accounted as the lands, &c. are of their own nature, without respect to be had to the bettering or impairing thereof by the good or bad husbandry of the owners or occupiers thereof (as it seemeth.) See Co. L. 174. & 179. to such purpose.

co. 9. 100. &  
10. 139,  
140.

Again, if the owner of any land be bound by prescription, or otherwise to repair the bank of a River, Wall, or Sewer, &c. he ought to do it: yet if he be not able to repair it; or that there be other inevitable necessity, or that there was no default in the party, but that the banks, or wall, &c. are broken, or over-flown by tempest, or unusual overflowing of waters, or the like (which be the acts and handy-work of God, and which no providence or industry of him that is bound to the reparations could prevent, in these cases the Commissioners ought not to charge him, only, with the whole, but may, and (in good discretion) ought, to charge and tax all such as have any lands (or other profits) there in danger, or subject to losse, according to their lands, &c.

co. 10. 230.

But when one is bound by prescription, or otherwise, to repair a bank or wall, &c. if there be any default in him, and the danger not inevitable but that hee alone may well repair it, the Commissioners may there charge him only to repair this: and if by his default the danger become inevitable, or that by his default he alone is not able to repair it, whereby others are charged as aforesaid, every of them may have their Action of the Case against him, &c. and shall recover their damages according to their losse.

Also, where a man hath lands lying betweene the Sea, the River of Thames, or any other River, and his neighbours grounds, and is bound by prescription, or otherwise, to make, or keep certain Banks, or to scoure certain Ditches or Sewers, between his said neighbour and the said River or Sea, and doth not make, keep, amend, and scoure the same, as he ought to do, by reason whereof his neighbours grounds are drowned, the par-damaged shall have his Action of the Case against the other for making

co. 10. 139.

& 143.

default, &c. See *F. N. B.* 93. g. & 7 *H.* 4. 8. & 41.

Also, these taxations ought be particular, *sc.* upon every severall owner, or occupier of lands, tenements, rents, commons, and fishings, &c. And not to be a generall sum in grosse upon a whole Town. See more hereafter, *tit. Stock of the Shire, cap. 53.*



## Sheriffs. CAP. 51.

**T**he *Custos Rotul.* or the eldest Justice of the *Quorum* (in his absence) ought at the generall Sessions after *Michaelmas*, to appoint two Justices of the Peace (the one being of the *Quorum*) to have the oversight & controulment of the Sheriff, Under-Sheriff, and other their Officers and Deputies, and the inspection and examination of their Books and accounts, and for making of *Estreats*, &c. in their County Courts.

Also either of those two Justices of Peace, or any other Justice of Peace (as it seemeth by the words of the Statute) upon complaint of the party grieved, may examine the Sheriff, Under-Sheriff, *Shiro-clerk*, and Plaintiffs, concerning the taking, or entering of plaints in their said County Courts, and Books against the Statute.

1 If any plaints shall be entered in their Books, in any mans name, unlesse the party plaintiff be either present in Court in person, or by a sufficient Attourney or Deputy, that is known to be of good name and behaviour.

2 If that the Plaintiff find not pledges to pursue his said plaint (if such persons as are known in that County.)

3 If the Plaintiff shall enter more than one plaint, for one trespass, contract, or cause.

4 If the Sheriff, Under-Sheriff, or Clerk shall enter, or cause to be entered any more plaints than the plaintiff supposeth he hath cause of Action for against the Defendant.

And if the said Justices, or Justice of Peace upon his or their examination, shall find any such default in the said Sheriff, Under-Sheriff, or Clerk, that shall stand for a sufficient conviction, without any further inquiry, or examination; and they shall forfeit upon the same examination, 40 shillings to the King for every default (the same to be recovered in the Exchequer.) And the same Justice or Justices who shall take the examination shall certify the said examination into the Exchequer within a quarter of a yeere upon pain of 40 s.

Also the said Justice of Peace may examine the Bailiffs of the Hundred, for not warning of the Defendants (in such plaints) to appear according to his precepts received from the Sheriff or Under-Sheriff. And if upon examination, the Justice shall finde any default in such Bailiffe, in not warning the Defendant to appeare, or otherwise in not executing their said office, that shall stand for a sufficient conviction; and the said Bailiff thereupon shall forfeit to the King for every such

default 40 s. the same examinations to be certified into the Exchequer as aforesaid.

Two Justices.

11 H. 7. 15.

P. 18.

Sheriffs &c. shall make no *Eſtreats* to levy their Shire amer-  
ciaments, untill the said two Justices (appointed at the generall Sessions as  
aforesaid) have had the view and oversight of their Books : And their  
*Eſtreats* shall be made by Indentures (or shall be indented) between the  
said Justices, and the Sheriff, and Under Sheriff, and sealed with their  
Seals, and the one part to remain with the said Justices, and the other  
part with the Sheriff, for to be his Warrant to levy the amer-  
ciaments by.

One Jus-  
tice.

P. 19.

P. 19.

The Bailiffs, &c. Collectors of the said amer-  
ciaments shall be sworn  
by the said Justices, that they shall not take more money than is forfeited  
and contained in their said *Eſtreats*, sealed by the Justices as aforesaid :

Also the said Justices of Peace or one of them, may examine the de-  
faults of the said Collectors, Bailiffs, and other gatherers of the She-  
riffs amer-  
ciaments ; whether they have taken or gathered any more  
money than is forfeited and contained in their *Eſtreats* : (sealed with the  
Seals of two Justices of Peace as aforesaid : ) And if upon examination  
the Justices, or Justice shall finde any such default, That also without  
further inquiry, shall stand for a sufficient conviction ; And the said  
Collectors, Bailiffs, or other gatherers of such amer-  
ciaments, thereupon  
shall forfeit to the King for every default 40 s. The said examination  
also (whether it be by one or two Justices) is to be certified into the  
Exchequer as aforesaid.

Two Justices.

11 H. 7. 15.

P. 20

Lamb. 349.

Also the said Justices of Peace upon suggestion or information of the  
party grieved, shall make like processe, as in an action of trespassse a-  
gainst the said Sheriff, under Sheriff, or other their officers (offending in  
any the particulars aforesaid.) for to appear before them to answer the  
said suggestion or information. See what the processe is in the title *Pro-  
cesse*. c. 132.

27 Eliz. 12.

P. 32. 33.

The *Custos Rotularum*, or any two Justices of the Peace, the one being  
of the *Quorum* (in officio, and without any Commission to that purpose  
to them to be directed) may take the Oaths of the under-Sheriff of their  
County, his Bailiffs, Deputies, Clerks, and other Officers, before they  
shall exercise their said Offices, &c.

§ The Oath of the Supremacy :

§ The Oath for the true exercising their office.

27 El. c. 12.

See the form of this last Oath, Statute 27 El. P. 32,

But speciall Bailiffs made for the serving of Processe, are not to be  
sworn

sworn by this Statute; as M. *Crompeau* reporteth, and saith, That it was so adjudged in the Kings Bench: And yet the words of the Statute be, That every person which shall have authority, or take upon him to intermeddle with execution of Proceffe, &c. shall receive and take the said Oaths, *Cromp.* 76. & 103.

## Souldier. CAP 52.

**E**Very Justice of Peace of the County where any Souldier, which hath served the King in his Wars, shall be found, which hath sold, given, purloined, or put away, &c. any horse or harnesse (where with he was set forth, or which was after appointed to him by the Lieutenant or Captaine, &c.) upon complaint and due prooffe of the offence to be made (by the owner, his Executors, or Administrators) to any such Justice, shall by the said Justice be committed to ward, there to remain without baile untill he hath satisfied the party grieved, his Executors or Administrators, for such horse, or harnesse, &c. unless hee doe bring with him before the same Justice sufficient testimony from his Captain, &c. in writing under their Seals, testifying that the said horse or harnesse, &c. was lost in the Kings service against the will of that Souldier, or was taken by his Captain, &c. from him, and appointed to some other to serve withall (except the same Souldier were imprisoned for the same offence before, by his Lieutenant or Captain, &c. and made restitution.)

The next Justice of Peace to the place of landing of any poore Souldier, Mariner, or Seafaring man (suffering Shipwrack) may make them a licence to passe to the place where they are to repair, &c. See herof in the title *Rogues*.

In default of the Parishioners, Churchwardens, and Constables (that shall not assesse the tax imposed upon the Parishioners by the Justices at their Easter Sessions, towards the reliefe of disabled Souldiers and Mariners) any Justice of Peace dwelling in that Parish, or (if none dwell there) in the parts next adjoyning, may assesse the same; and the same Justices of Peace may also in default of the Churchwardens and Constables, levy the same by distresse and sale of the goods of the party so refusing or neglecting, rendering to the party the overplus, &c.

If any poore Souldier or Mariner coming from, or beyond the Seas, shall repaire to his place of birth, &c. and cannot there get work, then upon his complaint, any two Justices of Peace neer the said place, shall take order (by their discretion) to set him to worke; and for want of

One Justice.  
*Cromp.* 76. b.  
2 Ed. 6. c. 11  
P. Inf. 84.

39 El. 4. 17.

43 Eliz. 3.  
8 Cap. 17.

Two Justices.  
39 Eliz. 17.  
P. Mar. 8.

work.



work, the said Justices shall tax the whole Hundred (by their discretion) for his relief, till sufficient work may be had.

Stock of the Shire. CAP. 33.

One Justice.  
To what  
uses they  
may be  
employed.

43 Eliz. 2.  
P. Poor 13.

**I**N the default of the Parishioners, Churchwardens, and Constables (that shall not assesse the tax imposed upon the Parishioners by the Justices at their Easter Sessions, towards the relief of the prisoners in the Kings Bench and Marshalsey; and of the Hospitals of that County; and of the losses by fire, water, and other casualties, and relief of the poore within that County) any Justice of Peace dwelling in that Parish, (or if none dwell there) in the parts next adjoining, may assesse the same: And the same Justice, or any other Justice of Peace of that limit (in the default of the Churchwardens, and Constables) may levie the same by distress and sale of the goods of the party refusing or neglecting to pay his part thereof, rendring to the party the overplus: And in default of such distress, any Justice of Peace of that Limit may commit such person to prison, there to remaine without bail, till hee hath payed the same.

Also in default of the Parishioners, Churchwardens, and Constables (that shall not assesse the tax imposed upon the Parishioners, by the Justices at their Easter Sessions, towards the relief of unmaimed souldiers and Mariners) any Justice of Peace dwelling in that Parish, or (if none dwell there) in the parts next adjoining, may assesse the same: And the Justice of Peace (in default of the Churchwardens and Constables) may levy the same by distress and sale of the goods of the party refusing or neglecting to pay his part thereof, rendring to the party the overplus. But in default of such distress the Justices of Peace may not commit such person to prison: as he might in the former case. 43 Eliz. cap. 2. P. Captain 11.

Now in these, and other rates and taxations; you shall observe these rules following:

Co. 9 12.  
See here  
110.  
Co. 5. 67.  
cap. 65.

- 1 First, that the most reasonable rating of land is by the yearly value, and quality thereof and not by the quantity or content.
- 2 Hee that occupieth (in his owne hands) lands lying in severall Parishes, shall be charged in every Parish proportionably for his lands there.
- 3 The Farmour shall be rated for the lands, and not the Lessee, or Land-lord.

4 A man (*sc.* the Landlord) shall not be rated or taxed for his Farme rents, in as much as the Farmour or occupier of the land is chargeable for the same land. So where my Farmour is assessed by his goods, I ought not to be assessed for my rent of the said farme. *Br. Quinz. 2.4. 7. Hen. 4. 33. & 11. Hen. 4. 35.*

5 By goods in most cases a man may be rated (as well as by lands) but not both by goods and lands, as it seemeth.

The like you may see in divers acts of Subsidies, wherein there is usually a speciall Proviso, that no person shall be taxed both for his lands and goods, nor double rated: see the acts of subsidies, *Anno 7. 18. & 21. Jacobi Regis, & Annis 27. 29. 31. 35. 39. & 43. Elizab. 11. & 4. Caroli. Reg.* and yet see *44. E. 3. Br. Customs 6.* where a tax of ten pound was made by the parishioners for the amendings of their Church, and was taxed to be levied of every plow land six pence, and of every Cow one penie, and of every ten sheepe ob. and I. S. for his land, cowes, and sheepe, was rated at ix. s. and was distrained for the same, and upon a Replevin by I. S. sued, no Exception was taken to the manner of rate imposed upon I. S. But note that the said tax was made by his consent, *Et omnis consensus tollit errorem. Co. 5. 36. & 40.*

So then he that hath both lands and goods shall bee charged by the best (of them both) but he is not to be double charged; *sc.* by the one and the other: and yet in some places they doe use to charge one person both by lands and goods: which if it bee warrantable by Law, yet it seemeth to be with this difference, *sc.* That where a man occupieth land, and also hath in his hands a great estate or stocke of merchandise, or bee also a Clothyer, Maultster, or the like, that such person peradventure may be charged by his lands, and also by such his stockes; but for such goods or stock of cattell whereby a man doth occupie, compassse, or manure his lands (as for horses, sheepe, kine, &c. wherewith he stocketh his land) a man shall not be charged; *sc.* if he be charged by his land, he shall not also be charged for such his cattell which doe manure the same land.

Also where a man is rated by his goods, it seemeth reasonable that such goods be rated after the value of Lands to be purchased: *sc.* One hundred pounds in stocke or goods, to be rated after 5. or 6. li. *per annum* in lands. And so after the like proportion for a greater or lesser estate in goods, stocke, merchandise, or the like.

Note, where a man is charged by goods, they must be *bona notabilia*, as it seemeth: And yet to the Subsidie, men are rated not onely by their stocke of merchandise or cattell, corne, household-stuffe, and other movable goods which are *Notabilia*, but also by their coine, and debts ow-

ing to them (deducting such debts as they owe to others, and such debts as be desperate :) But there the party over-rated, upon his complaint to the Commissioners; and his oath taken before them, that his goods, coyne, or debts, be not of such value (which oath the said Commissioners are authorised to take by the Statutes) the said Commissioners may abate the said assessments, according as upon such examination shall appeare to them just. See the afore recited Acts of Subsidies.

Also for goods, a man shall be charged only in that Towne where the goods be at the time of the assessment. *Br. Quinz. 4. & 6.* See the Statute 9. *H. 4. cap. 7.*

Also if a man be assessed for his goods in D. when as he hath no goods there, and be distrained for such assessment, he may have an Action of Trespasse, *B. Quinz. 3. & 4.*

The Constables (or other officers) and greater part of the Parishioners (upon a generall warning given in the Church) assembled may make such taxations by law. See *Coke 5. 6. 7. Fi. 49.*

The like may be done by the Church-wardens, and the greater part of the Parishioners, for Church charges.

And if the greater part of the Parishioners will not meet upon such warning given, it seemeth the officers, and such of the Parishioners as will meet, may make such taxations.

Note, that such taxations being made for a Common-wealth, as for the making or mending of a Bridge, Highway, Causey, Sea-banke, or the like, they shall bind all persons (although they assent not) 44. *Ed. 3. 18. 19. Br. Customs 6. Co. 5. 63. Fi. 49.*

And so of taxations made to reape the Church, or for other common towne charges (as it seemeth) where such taxations are made by the greater part of the Parishioners, as aforesaid. See *Co. 5. 63. & 67. & 21. H. 7. fol. 20. b. & 8. E. 1. Fitz. Aff. 413.*

Also when assessments are made for the reparations of Bridges, Highways, Seabankes, Causeys, and the like, it seemeth that the summe assessed upon particular men (or townes) ought to be competent and reasonable, having regard to the benefit which the parties assessed or charged, shall or may have and enjoy by reason of the said assessment; and so reasonable as that the party shall or may have more benefit than charge thereby; and then such assessments cannot bee reputed burthen some, or a charge to the subject, when hee shall or may reape benefit thereby. See 13. *H. 4. fol. 14. & Co. 5. 63.*

If a township be amerced, and the neighbours doe (by assent) assesse a certaine summe upon every inhabitant, and doe agree that I. S. shall gather.



gather it up, and that if it be not paid by such a day, that I. S. shal distrein for the same, in such case a distresse taken by I. S. (for such rates behind) is good. *Br. Cust. 6. Doct. & Stud. 74. b.*

## Subsidie. CAP. 54.

**I**F any person that ought to be set to the Subsidie, doe by his craft or covine escape the taxation, and it be proved before two Justices of Peace of that Countie; then shall he be charged at the double value of so much as he ought to have beene taxed at, and shall further be punished at the discretions of the said Justices. See 7. & 21. *Jac. Reg.* and divers former Acts of Subsidies.

## Swearing. CAP. 55.

**I**F any person or persons shal prophanely sweare, or curse, in the hearing of any Justice of Peace of the Countie, (Major, Bailife, or head Officer of any Citie or town Corporate) where such offence shall be committed; or shall be thereof convicted by the oaths of two witnesses, or by confession of the party before any such Justice of Peace or head Officer, &c. every such offender shall for every time so offending, forfeit and pay to the use of the poore of that parish where the offence shall be committed, the summe of xii. d. 21. *Jac. Regis, cap. 20. & 3. Caroli, 4.*

Every Justice of Peace, and every such head Officer may minister the said oath to every witness. 21. *Jac. cap. 20.*

Every Justice of Peace, and every such head Officer, may make their Warrant to the Constables, Church-wardens, and Overseers of the poore of that parish where the said offence shall be committed; and the said Constable, Church-wardens, and Overseers of the poore, by vertue of that warrant may levie the same sum and summes of money by distresse and sale of the offenders goods, rendring to the party the overplus. *Ibid.*

In defect of such distresse, the offender (if he or she be above the age of xii. yeares) shall by warrant from such Justice of Peace, or head Officer, be set in the Stocks by three whole houres. But if the offender be under the age of xii. yeares, and shall not forthwith pay the said summe of xii. d. then he or she, by warrant of such Justice of Peace or head Officer, shall be whipped by the said Constable, or by the parent or master, in the presence of the Constable. *Ibid.*

But every offence against this law, shall be complained of, and proved as abovesaid, within xx. dayes after the offence committed. *Ibid.*

## Transportation. CAP. 56.

One Iustice  
1. & 2. P. &  
M.  
P. Iust. 27.

**I**T should seem by the words of the statutes that any one Iustice of Peace may inquire of, heare & determine (as also may examine the mariners, and every other person) of all and singular the offenders against the Act 1. & 2. Phil. & Ma. provided for the restraining of carrying Corn, Beere, Butter, Cheese, Herring, and Wood, beyond the sea; but *quere*.

Yet note that every man may transport Corne, it being at these prices following (except it be prohibited by Proclamation) *sc.*

21. Iac. 28. 3. Car. 4.	Wheat	} the quarter	xxxii. s.
	Rye		xx. s.
	Barley and Mault		xvi. s.
	Pease and Beanes		xvi. s.

Also every man may transport any Beere, when the price of a quarter of Mault exceeds not the summe of xvi. s. 3. Iac. cap. 11. 21. Ia. 28.

And it is holden to be great policie, to provide that Corne be alwayes of a reasonable and competent value, it being an assured meanes to increase and advance Husbandrie and tillage, the ancientest of all trades and professions, and commanded by God to *Adam*, Gen. 3. 23. One of the greatest commodities of this Realme, and much respected and favoured, as well by the common Law, as also by the common assent of the King, the Lords Spirituall and Temporall, and by all the Commons in many Parliaments, Ca. 4. 39. See the Statutes 19. R. 2. cap. 7. 4. Hen. 6. cap. 5. & 1. & 2. P. & M. cap. 5.

## Trespasse. CAP. 57.

43. El. 7.  
F. 1.

**A**LL and every lewd and meane persons, which shall unlawfully cut or take away any Corn growing; or rob any Orchards or Gardens; or break or cut any hedge, pale, raile, or fence; or dig, pull up, or take away any fruit trees; or shall cut or spoyle any woods, underwoods, poles, or trees standing (not being felony;) And their procurers or receivers knowing the same, being thereof convict by confession of the partie, or by the testimony of one sufficient witnesse upon Oath before any one Justice of Peace (where the offense shall be committed, or the offender apprehended,) shall for the first fault give the partie wronged such recompence, & within such time, as by any one Justice of Peace (of the County where such offense shall be done) shall be appointed. And if such offender shall be thought (in the discretion of the said Justice) not able, or doe not make satisfaction accordingly; then the said Justice shall commit the said offender

fendor to some Constable, or other inferiour Officer (where the offence shall be committed, or the offender apprehended) to be whipped.

Also it seemeth, that for the second fault, and every other offence whereof such offender shall be after convicted in forme aforesaid, such offender shall be whipped, as aforesaid, without any satisfaction to be taken, *ibid.*

If any Constable or inferiour officer, doe refuse, or doe not, at the commandment of the Justice (by himselfe, or some other by him to be appointed) execute upon the offender the punishment aforesaid, the said Justice of Peace may commit such Constable, &c. to the Common Gaole, there to remaine without baile, untill the said offender bee by the said Constable, or by some other by his procurement, whipped as aforesaid. P. 2.

But no Justice of P. shall execute this stat. for any of the offences aforesaid, done unto himselfe, unlesse he be associated and assisted with one or moe other Justices of the Peace, whom the offence doth not concerne. P. 3.

It seemeth that any one Justice of Peace (not being the partie grieved) may send such offenders for their second fault, &c. to the house of correction, as idle and disorderly persons, there to be detained, &c. at the discretion of the said Justice of Peace; and this by force of the *stat. 7. 14. 4.* especially if they be common offenders in this kind; or may bind them to their good Behaviour, and so over to the next quarter Sessions, and by order from thence, to be sent to the house of correction, there to be continued some convenient time.

Tythes. CAP. 58.

**T**WO Justices of the Peace (the one being of the *Quorum*) upon complaint by any competent Judge of Tythes, for any misdemeanour of the defendant in a suit of Tythes (or for other duties of the Church) may cause him to be attached, and committed to ward, there to remaine without baile, untill he find sufficient sureties (unto the said Justices) by Recognisance to the Kings use, to obey the proceſſe and sentence of that Judge. 22. H. 8. 73. P. 148. 1942

Also upon complaint or certificate in writing by any Ecclesiasticall Judge, that hath given definitive sentence in the case of Tythes against one which wilfully refuseth to pay the tythes, or summes of money so adjudged, two such Justices of Peace may cause the party to be attached, and committed to the next Gaole, there to remaine without baile, till he find such suretie (as aforesaid) to performe that sentence.

*On si le partie disobeynt sentence, il peut estre excommunié par son Contumacy, & dunque si ce luy issint excom: ne voile per 40. jours estre reconcilic*



*conseil al esglise, sur Certificat fait al Roy per la Ordinarie en le Chancerie, le partie sera mise en prison tanque il voilo satisfaire lesglise, & ceo per un brieve de Excom<sup>r</sup>: Capiendo.*

## Tyle. CAP. 59.

17. Ed. 4. 4.  
P. 3 4.  
Lamb. 197.  
Cromp. 130. **I**T seemeth by the words of the statute, that any one Justice of Peace may enquire, heare, and determine ( by examination, or otherwise by his discretion ) of all and singular the offences committed in tyle making, (*sc.* if they be not made good, and of earth well prepared, and also of due assise in length, breadth, and thicknesse,) and may assesse the fines limited by the same Statute : and may call before him such as have best knowledge in tyle making, and appoint them searchers of the said defaults, but M<sup>r</sup>. *Lambert*, 197. maketh a doubt thereof.

## Watch. CAP. 60.

13. Ed. 1.  
P. 1.

**E**Very Justice of Peace may cause night watch to be duly kept, for the Arresting of persons suspect, and night-walkers (be they strangers, or others) that be of evill fame or behaviour: and this they may doe by force of the commission; the first *Assig. Lamb. 190.*

16.

This watch is to be kept yearly from the feast of the Ascension, untill Michaelmas, in every towne, and shall continue all the night, *sc.* from the Sunne setting, to the Sunne rising.

Winch. 13.  
E. 1. cap. 4.  
S. E. 3. 14.

All such strangers, or persons suspected, as shall in the night time passe by the watchmen (appointed thereto by the Towne, Constable, or other officer) may be examined by the said watchmen, whence they come, and what they be, and of their businesse, &c. And if they find cause of suspition, they shall stay them; and if such persons will not obey the arrest of the watchmen, the said watchmen shall levie hue and erie, that the offenders may be taken; or else they may justifie to beat them (for that they resist the peace and Justice of the Realme,) and may also set them in the stocks (for the same) untill the morning; and then if no suspicion be found, the said persons shall be let goe and quit: But if they find cause of suspicion, they shall forthwith deliver the said persons to the Sheriffe, who shall keepe them in prison untill they be duly delivered; or else the watchmen may deliver such persons to the Constable, and so to convey them to the Justice of Peace, by him to be examined and to be bound over, or committed, untill the offenders be acquitted in due manner. See more of watch in the title *Felony, cap. 109. Fine.*

These watchmen are also to apprehend all Rogues and Vagabonds, Night-walkers, Eve-droppers, scouts, and such like, and such as goe armed, &c.

Note that in an action of false imprisonment brought by one *Sm.* against *Browne* (a Constable of Calmesford in *Essex*) these things were holden for Law concerning watches; about 32. *Elix.*

1 First that no man is compellable to watch, except he be an inhabitant within the same towne.

2 That such as are inhabitants within the towne, are not compellable to watch at the will of the Constable, but onely when their turne cometh; and therefore *Gandy* (Iustice) said, that the statute of *Winch.* is, that from henceforth watches shall be kept as hath beene used in times past, &c. and so the manner of watching is not referred to the will of the Constable; but onely to the use heretofore, which is commonly by turne, or by the house.

3 That if a man who is compellable to watch, shall contemptuously refuse to watch upon the commandement of the Constable, the Constable *ex officio* may set him in the stocks for such his contempt: *Tamen quere de hoc.* Or else the Constable may present such his default at the Assises, or Sessions of the peace, &c. or may complain thereof to any Iustice of Peace who may bind the offender to the good Behaviour, and so over to the next Quarter Sessions, &c.

Note also, that both watching, and warding, must be by men that be able of body, and sufficiently weaponed.

Watermen. CAP. 61.

**E**Very Iustice of Peace (as it seemeth by the generall words of the 8. & 3 P. & statute) within the shires next adjoyning to the river of Thames (between *Gravesend* and *Windfor*) within his severall jurisdiction, hath power (upon complaint made to him by the Overseers and Rulers of the Watermen and Whirrymen, or two of them, or by the Masters of any such servants) to examine, heare, and determine all offences against the statute: and to set at large him that shall be imprisoned by such Overseers or Rulers, according to this act; (if there be just cause:) and also by his discretion to punish those Overseers and Rulers, that shall unjustly punish any person, by colour of this act.

The offences of Watermen against this Statute, are these:

1 No singleman shall be a Waterman there unlesse he be a house-keeper, or an apprentice, or retained in service by the whole yeare. See the Stat. 1. Jac. cap. 16. P. Botem. 4.

P. *ibid* 3.

2 One of the (two) Watermen, rowing together in one boat, must be allowed by the most part of the eight Overseers, by writing under their seale; and must have used rowing there two yeares before.

P. *ibid* 6.

3 Watermen shall not hide themselves in time of pressing for the Kings service, &c.

P. *ibid* 7.

4 Watermen shall not take for their fare and labour, above the prizes assessed, &c. and set up in tables in *Westminster* Hall, &c. But *quære* whether the Justice of Peace be to meddle in this; See the Statute at large.

## Wax. CAP. 62.

21. H. 6. 12.

P. *Wax* 8.P. *just* 42.

**E**Very Justice of Peace may examine, and search (by his discretion) such as doe sell, or set forth to be sold, any candles or other workes of Wax at higher price than after the rate of *iiii. d.* the pound, over the common price of plaine Wax, betweene Merchant and Merchant, and may punish them by forfeiture of the worke, or value thereof, and by fine to the King.

## Wine. CAP. 63.

24. H. 8. 6.

P. *Wine* 4.

**E**Very Justice of Peace (as it seemeth by the words of the Statute) within the precinct of his office, (at the request of any subject, to whom deniall of sale shall be made of any Wine, and full payment therefore offered according to the prizes set downe by the Lords, &c.) may enter into the places where such Wine shall lie, and may sell and deliver the same Wine desired to be bought, to the person requiring to buy the same, taking the Buyers money toward the satisfaction of the forfeiture, &c.

## Wood. CAP. 64.

35. H. 8. 17.

13. *Elix* 26.

P. 8. 9.

**T**wo Justices of Peace (not being of kindred, alliance, counsell, or fee, to the Lord or owner of a Wood) appointed by the more part of the Justices of Peace at their Sessions, upon complaint of the Lord made unto them, may divide and set out the fourth part of the Wood, if the Lords and Commoners thereof (being first called before them) cannot agree upon it.

*Weights.*



## Weights. CAP. 65.

**T**WO Iustices of Peace (the one being of the *Quorum*) may by examination, or enquire, heare, and determine the faults of head officers, in Cities, Boroughs, and Market townes, that doe not twice every year view and examine all weights and measures in their Townes, &c. And doe not breake and burne the defective. Two Justices. 11. H. 7. 4. P. Iust. 92. Lamb 345.

Also two such Justices may (by examination, or enquire) heare and determine the faults of all buyers and sellers, which doe not buy and sell with weights and measures that be lawfull, *sc.* with such as be marked and sealed, *sc.* in market townes, (or like and equall with the Kings standard *sc.* out of market townes *quare*) Also the said Justices may breake and burne all defective weights and measures. See *hic postea*. Ibid. Lamb 345. P. weights 9.

The said Justices may fine all and every the offenders aforesaid by their discretion, and may make processe against them, as if they were indicted of trespassse against the peace. For the processe, see hereof in the title, *Processe*. Ibidem & P. Iust. 92. Lamb 345.

Now for the readier direction of the Justice of Peace herein, I thought good to set downe the just and certaine contents, of all (or most sorts of) weights and measures, that so they may the better judge what weights and measures be unlawfull, or defective, and what not.

By the Statute of *Magna Charta*, cap. 25. there shall be but one Weight and one Measure of Corne, Wine, Beere, and Ale, and one Yard, throughout the whole Realme, (*sc.* according to the Kings Standard, in the Exchequer) and this statute of *Magna Charta* hath since herein beene confirmed by many severall Parliaments, *viz.* by the statute of 14. E. 3. 12. 25. Edw. 3. cap. 10. 27. Edw. 3. 10. 34. Edw. 3. 5. 13. Rich. 2. 9. 8. Hen. 6. 3. 7. Hen. 7. 4. 11. Hen. 7. 4. & 12. Hen. 7. 5. as thereby appeareth. 9 H. 3. 25. P. weights 1. P. 7.

And yet notwithstanding there alwayes hath beene, and still are two kinds of weights used in *England*, and both warrantable: the one by law, the other by custome (as it seemeth,) but they are for severall sorts of wares or commodities; for there is *Troy* weight, and *Averdepois*. Rest 8. Dis. fol. 527 b.

1 *Troy* weight is by law; and thereby are weighed gold, silver, pearle, precious stones, silke, eleſtuaries, bread, wheat, and all manner of graine, or corne, is measured by *Troy* weight. And this hath to the pound xii. ounces, or xx.s. sterling weight. Rest 8. Dis. fol. 527 b.

2 *Averdepois* weight is by custome (yet confirmed also by statute;) and thereby are weighed all kind of Grocerie wares, Physicall drugs, Butter, Cheese, Flesh, Wax, Pitch, Tarre, Tallow, Woolls, Hemp, Flax, Iron, Steele, Lead, and all other commodities not before named (as it seemeth)

seemeth,) but especially every thing, which beareth the name of garbel, and whereof issueth a refuse or waste. See *Reast. 8. fol. 527.* and the booke of *Assise, impress. 1397.*

And this hath to the pound xvi. ounces, or xxv. sterling weight.

Also in this *Averdepois* weight, unto every hundred is allowed xii. pound weight: so as 112. pounds make a hundred weight, six and five pounds make halfe a hundred; and 28 pounds make a quarter.

27 Ed. 3. 10.

Also all manner of *Averdepois* shall bee weighed by lawfull weights, sealed according to the Standard of the Exchequer, *P. 127. 128. 129.*

14 ounces and a halfe, & two pence weight Troy,  
doe make 16 ounces of *Averdepois*.  
7 pounds, or *Averdepois*, make the gallon.  
14 pounds, or *Averdepois*, make the peck.  
56 pounds, or *Averdepois*, make the bushell.  
pintes, or pounds.

Measures of  
Cerne, according to *Averdepois* weight.

Troy weight.

Quarts,  
Pottles,  
Gallons,  
Pecks,  
Bushells,  
Coombes,  
Quarters.

5120	512	256	64	16	8	4
2560	256	128	32	8	4	2
1280	128	64	16	4	2	1
640	64	32	8	4	2	1
320	32	16	4	2	1	
80	8	2	1			
20	2	1				
10	1					

Ten quarters of  
cerne is a Last

Measures of  
Graine according to Troy  
weight.

Beere measures.

Ale measures.

Pintes.	288	144	72	36	18	9	4	2
Quarts.	144	72	36	18	9	4	2	1
Pottles.	72	36	18	9	4	2	1	
Gallons.	36	18	9	4	2	1		
Ferkins.	4	2	1					
Kilderkins.	2	1						
Barrels.	1							

256	128	64	32	16	8	4	2	1
128	64	32	16	8	4	2	1	
64	32	16	8	4	2	1		
32	16	8	4	2	1			
16	8	4	2	1				
8	4	2	1					
4	2	1						
2	1							
1								

Measures of  
Beere and Ale.

See for Corne, Beere, and Ale, more fully in that which followeth :

32 Wheat cornes taken in the midst of the eare,  
weigheth r.d. sterling.

Twentie pence sterling maketh the ounce Troy.

12 Ounces maketh weight 1 l. Troy.

2 pottles maketh measure 1 pinte.

Two pintes, or pounds, maketh the quart.

Two quarts, maketh the pottle.

8 pintes

4 quarts

2 pottles

maketh the gallon.

Eight quarts maketh the peck.

64 pintes

32 quarts

8 gallons

4 peckes

maketh the

Busshell,

or

Firkin.

Troy

weight 12.

H. 7. 15. &

51. H. 3.

Sixteene gallons

Two Firkins.

maketh the

Kilderkin.

halfe Barrell.

Rondler.

256 pintes

128 quarts

32 gallons

4 firkins

2 kilderkins

4 Bushels

maketh the

Coombe,

or

Barrell.

32 pintes

256 quarts

64 gallons

8 firkins

2 kilderkins

2 barrells

8 bushels

maketh the

Quarter,

or

Hogthead.

So the Pint, and pound  
Firkin, and bushell  
Barrell, and coombe  
Hogthead, and quarter

are of like content.

Also the Statute of 23. H. 8. cap. 4. doth limit the weight of every of these 3 vessels here next named, being emptie, as followeth, *sc.*



- 1, the barrrell  
 2, the halfe barrrell  
     or Kilderkin  
 3, the firkin
- } must weigh  
 (being empty) } pounds.
- 26  
 13  
 6

## Measures of Corne.

All kind of corne and graine is measured by Troy weight.

Bushell

By Statute the bushell must containe eight gallons, or 64 pounds or pintes of wheat, 31. E. 1. 12. H. 7. 5. P. Weights 2. Rastal. 34. Div.

See the  
 booke of  
 Assises.

And yet by the booke of Assise, imprinted *An. Dom. 1597.* the bushell is to containe 56 pounds (or pintes) of Averdepois weight (which is three pounds. or three pintes and eight ounces Troy more than the stat. or Troy weight.) For 56 pounds or pintes Averdepois weight, and 67 pounds eight ounces Troy weight, doe justly agree.

P. 3

15. R. 2. 4.

P. 1.

34 E. 3. 6.

Also eight bushels striken, make the quarter of corne, 11. H. 7. 4. 25. E. 3. 10. & 34. E. 3. 6.

Also every measure of corne shall be striken without heape, 25. E. 3. 10. and all purveyances shall bee by such measure, *scilicet*, striken without heape. *ibid.*

P. 9.

Water measure, sold within Ship-board, shall containe five peckes striken, to the bushell.

P. 5. 9.

No person shall buy or sell with a bushell, except it bee sealed, and marked by the officer, and according to the Kings Standard.

But note, that in many places and Countries, the measure of corne doth much differ, and the bushell in one place is greater than in another.

9 H. 4. f. 36.  
 30. ass. pl. 38.  
 Co. lib. 113.  
 115.

And yet in the measure of corne *Consuetudo loci est observanda*, if it be a custom exceeding all memory & used without any lawfull interruption; for such time and usage sufficeth for a Law, though regularly Custome or Prescription against a stat. is not good, except that such customes and prescriptions be also confirmed by stat. or that they be saved by another stat. see *Br. presc. 2. 50. Pl. 36. b. & 8. H. 7. fol. 4. b. Dr. & Stud. 47.*

But this difference of measure of corne, should seeme to come partly from the diversitie of Clarkes of the Markets, (there being a Clarke of the market for the Kings house, another for the Prince, another for the Duchie, others in corporate townes, and others belonging to Lords of liberties) and partly from the abuse of divers corporate townes, and other priviledged places, or liberties, where they by usurped custome (without any good warrant of law) have used to have and to buy by such measures: And where the Clarke of the market for the K. hath for-borne or neglected to meddle in regard perhaps of their corporation, liberty, or some other respect. But this abuse two Justices of Peace (the one being of the

the *Quorum*) may reforme: *sc.* two Iustices of Peace of the Countie, where there be no Justices of Peace within that Corporation, &c.

Also the Clarke of the market for the Kings house, may reforme this in all places within the Verge, 27.H.8.cap.24.

And yet by the words of the statutes of 25.E.3.cap.10. & 34.E.3.cap.6: the rents and farmes of Lords shall be measured by such measures as they were wont to be, whether it were by heaped measure or greater measure than the statute appointeth.

And note that the Clarke of the market shall carry with him all his weights and measures signed according to the Standard of the Exchequer, 16.Rich.2.cap.3. And the Justices of Peace may, yea ought for to sit with the Clarke of the market, at his comming into the country, &c.

Sir Francis Harvie hath often delivered in his charge at Cambridge Assises, these directions: *sc.* That one Iustice of Peace at the least, ought to sit with the Clarke of the market, to see that the Kings subjects be not wronged. And that the Clarke of the market ought to have with him his directions out of the Exchequer. And that hee may take no money for any Bills, &c. And that he ought to seale no Bushell, or other measures, or weights, but once (and not yearly as they use to doe:) And that if after the first sealing he shall take any thing for the sealing thereof againe, or for the shewing thereof &c. it is Extortion, yea, it is one of the greatest oppressions (said he,) for that it concerneth almost all men.

For the assise of bread, I referre you to the bookes made for the assise Bread; thereof, and will only set you downe some short observations therein.

- 1 All sorts of bread ought to be weighed by Troy weight.
- 2 *Post septem dies, panis non ponderetur.*
- 3 The Bakers shall not sell to any Viſtualer &c. to be retailed, but onely thirteene penie-worth for twelve pence, as well mans bread, as horse-bread.
- 4 Every Baker shall have a marke of his owne, for his bread, *Poult. Stat. at large, p. III. & Rast. weights 7.*
- 5 Every sort of bread shall be weighed according to the price of the middle sort of corne.
- 6 No man shall be a common Baker, except that he hath beene an Apprentice to that trade by the space of 7 yeares at the least.
- 7 The Statute doth appoint three sorts of bread to be made and sold to the subjects: *viz.* white bread, wheaten, and household bread; besides the horse-bread.

8 The Bakers of Cities, Boroughs, and Corporate towns, shall have vis-

allowance, for the baking of every quarter of wheat, over and above the second price of wheat in the market.

9 Bakers inhabiting out of Cities, Boroughs, and Corporate townes, shall have iij.s. in allowance for their charges in baking of every quarter, &c.

10 But foreigners bread should weigh 6. ounces in the penie, loafe, more than the towne dwellers, for that they beare nor such, scot and lot, as the others doe.

11 Lastly for horse-bread, that three horse-loaves be sold by the baker for a penie, xiii.d. for xij. and every loafe to weigh the full weight of a penie white loafe, at what price soever the wheat be sold.

For the punishment of the Bakers for their unlawfull bread, *quere* whether they shall onely be amerced &c. after indictment and conviction of their said offence; or that the Iustices of Peace (or sworn officers in Leets) may take away their unlawfull bread, and give it among the poore, as officers in corporate townes are enabled or appointed to doe, in the end of the booke of Assise, imprinted *Ann* 1597. And all Iustices of Peace are there willed and required to be ayding and assisting to the said officers therein. But in the stat. 51. Hen. 3. & 13. R. 2.8. Bakers and Brewers being convict for not observing the assise, the first, second, and third time, they shall be amerced according to the offence (if it be not grievous.) But if the offence be grievous or often, then shall they suffer punishment of the body, without redemption (or remitting of the offence either for gold or silver) *scilicet* a Baker to the Pillorie and the Brewer to the Tumbrell (now called the Cucking-stoole, as it seemeth by Mr. Lamb. 62.) or to some other correction. See another statute concerning Bakers and Brewers, and their punishments, and to the same effect, made *in certo tempore* cap. 2. & cap. 6. *Poultons statutes at large*, fol. 111.

Note, that within every Leet or market there ought to be a Pillorie and a Tumbrell, to punish the Bakers and Brewers that offend, &c. *Fit. Leet*. 12. And for want thereof the Lord of such Leet, or Market, shall make a fine to the King, *Cro*. 149.

Also they which have the keeping and correction of the Assise of Bread and Beere, if they have not a Pillorie, and a Tumbrell to punish Bakers and Brewers that are faulty, they shall forfeit their Franchise, *Cro*. 148.

Also a Leet may be seized into the Kings hands, if the Steward there shall take money to spare the punishment of the Tumbrell, where one shall offend in the assise of bread or ale, *Libr. Intr. Crompt*. 183.

The Millers Toll-dish also must be according to the standard:

Now Millers are to take for the toll but the twentieth part, or 24. part, accor-



according to the strength of their water, and custome of the Realme, stat.  
3. E. 2. de Vitalariis, R. 28. ut. weights. Dy. 7.

And yet in some places the Millers doe claime and take the 16 part;  
and where the custome hath bene so used time out of mind, it becometh  
good and warrantable; *tamen quere.*

But the Miller ought to take but one quart, for grinding of one bur-  
shell of hard corne; and if he fetch and carry back the grist to the owner,  
he may take two quarts of hard corne, and this hard corne is intended of  
Wheat, Rye, and Meslin (which is Wheat and Rye mixed.) And for  
Mault, the Miller shall take but halfe so much toll, as he taketh for hard  
corne. (If so one plene in the bushell) for that Mault is more easily ground  
than Wheat or Rye; but if the Miller do fetch to his Mill and carry back  
the mault to the owners house, then the Miller shall also have double  
toll. See *Crompt. author. des Courts*, 221. & 224.

Note that Millers are not to be Common buyers of any corne, to sell  
the same againe, either in corne, or meale: But ought onely to serve for  
the grinding of corne that shall be brought to their Mills.

*Measures of Wine, Beere, and Ale, &c.*

Wine	} their mea- sure is all one, sc. the	Rondlet, 16. & di.	} gallons.
Oyle, and		Barrell, 32. & di.	
Honey:		flotthead, 63.	
		Pipt, 126.	
		Tunne, 252.	

18. H. 6. 17.

P. n. in 13.

1. R. 3. 13.

Yet for honey the assise is altered to 32. wine gallons the barrell, 16.  
gallons, the kilderkin, &c. 23. *El. 8. P. War. 6.*

Beere, the measure thereof,	} Finkin, 9.	} gallons.	
is as followeth, sc. the			Kilderkin, 18.
			Barrell, 36.

23. H. 8. 4.

P. Coop. 2.

And so Beere measure containeth in the barrell foure gallons more then  
Wine, or ay other vessell.

Ale the measure thereof is	} Finkin, 8.	} gallons.	
as followeth, sc. the			Kilderkin, 16.
			Barrell, 32.

No Cooper shall make any other vessell for Beere, or Ale, to be sold;  
within this Realme, of any greater, or lesser number of gallons than is  
aforesaid; unlesse he shall cause to be marked upon every such vessell, (of  
greater, or lesser number of gallons) the true and certaine number how  
many gallons every such other vessell shall containe. 23. *H. 8. c. 4.*

Also no brewer of Beere or Ale, shall put the Beere or Ale to sale, to be  
spent within this Realme, in any other Barrells, Kilderkins, Firkins, or o-  
ther

ther vessels of wood, other than shall be marked by a Cooper, and where of every vessel shall containe and hold the number of gallons abovesaid, of full and iust measure, or above, and not under that measure, *ibid.*

The Wardens of Coopers in all Cities, and boroughs, where there be such Wardens; and in all other boroughs and townes, the Major, Sherifes, Bailifes, Constables, or other head officers, may search and gage all such vessels, (made in such Citie or Towne) whether they beate their true contents, as aforesaid; and if they find any vessell defective, they may make or amend the same according to the true content, or else may cause the same to be burned. *ibid.*

*Cromp. 94.* It appeareth by M. *Cromp.* that it was agreed by the Justices, that the measure of Wine and Ale should be all one: but now by the statute of 1. *Ja. c. 9.* Ale, and Beere, shall be sold by retaile by one and the same measure, *sc.* by the ale quart.

*P. Aleh. 7.*

And for the prices of all vessels of Ale and Beere, by the stat. 23. *H. 8. cap. 4.* any two Justices of Peace might assesse the prices thereof. And that no Brewer shall take for any barrel, kilderkin, or firkin, &c. of ale or beere, but after such prices and rates as shall be assessed by the said Justices of Peace in the Countrey, or by the Major or their head officers in corporate townes &c. But now by the statute 8. *Eliz. cap. 9.* the assessement of the prices thereof by the Justices, shall bee by the Justices or the moe part of them being present at the Easter quarter Sessions, and onely of such vessels as shall be made or sold out of Cities or corporate townes.

*Sope.*

23 *H. 8. 4.*

*P. Sope 1.*

Sope, the barrell, halfe barrell, and firkin, shall be of the same content that ale is, *sc.* the barrell, 32 gallons or above, and the emptie vessell not to be in weight above 26 pound, the empty firkin not to weigh above 6 pound and an halfe; and to containe 8 gallons or above of full and iust measure.

Butter.

Cheese.

*P. weight. 6.*

Butter also shall be of the same measure that Sope is of.

Cheese; A weigh of cheese must containe 32 cloves, and every clove 8. l. of averdepois weight: although the statute 9. *H. 6. 8. Rast. 28. din.* and the booke of assise imprinted 1597. seeme to make 7. l. to be a clove. And yet by the booke of assise, the weigh of Suff. cheese must containe 256. l. or 12 score and 16 pound of averdepois weight: (and their barrell of butter is of like weight with the foist: ) But the weigh of *Essex* cheese or butter, is 300. l. weight, after the rate of five score and xii. li. to the hundred, which is 336. l. or 16. score and 16. pounds, of averdepois weight.

Flesh.

Beefe and other flesh are 16. ounces averdepois to the pound, and 8. of them

them pounds to make the stone; except where the usage of the Countrey require more pounds to the stone, *Book of Assise.*

• Herring, the barrell, halfe barrell, and firkin, shall be the same content *Fish* that ale is, *sc.* the barrell 32 gallons, &c. *11. H. 7. c. 23. & 13. El. 11. P. Fish 9.*

Also Herrings are sold by tale, *sc.* six score herrings shall goe to the hundred, ten hundred to the thousand, and ten thousand to the Last, *31. E. 3. ca. 2.*

Salmon and Eeles: see the contents of their vessels, *Stat. 11. H. 7. cap. 23. P. Fish. 8. 10.*

Wooll, 14 pound weight goeth to the stone of wooll, 28 pounds goeth to the Tod, and 26 stone goeth to the sack. *11. H. 7. 4. P. 3. 31. Ed. 3. cap. 8.* *wooll. 25. E. 3. 4.*

Hemp, 20. li. weight maketh the stone: *P. Cables 2. 21. H. 8. cap. 12.*

Sugar, spices, and wax, 8. li. maketh the stone: and 13 stone and a halfe, or 108 li. maketh the hundred: see the *stat. de Compos. ponder. Rast. Weights 8.*

Hops, five score and twelve pounds maketh the hundred.

Lead, the content of the pound, the stone, and the load: see *Rastal Weights 8.*

Leather, the content of a dicker, and the last: see *Rast. Weights 8.*

The contents of iron, glasse, linnen cloth, and divers other things: see the *stat. de Compos. ponder. Rast. 8.*

All other commodities of tale, or number, are sold by the hundred,

Cattell, and fish, are sold six score to the hundred: and yet the hundred of hard fish must containe eight score. *Rast. 8.*  
 whereof } Also all other headed things, as nailes, pins, &c. are sold six score to the hundred.

All other things have but five score to the hundred.

For the assise of fuell, *sc.* of coale, talwood, billet, and fagot, see the *Stat. Fuell. P. Fuell. 7. Ed. 6. 7. 43. El. 14.* A sacke of coales is foure bushels.

Timber well hewen, and perfectly squared, fifty foot thereof maketh the load.

Lath shall containe in length 5 foot, in breadth two inches, and in thicknesse halfe an inch.

Tyles six score goe to the hundred: as for the assise thereof, (*sc.* the length, breadth, and thicknesse thereof.) See the *stat. 17. Ed. 4. cap. 17. P. Tyle 2.*

A bale of Paper, is ten reame; a reame is twenty quires; a quire is 25 sheetes.

A roule of Parchment is five dozen, or sixtie skins.

Three barley cornes measured from end to end (or foure in thicknesse) maketh one inch.

Foure inches maketh an handfull, *27. H. 8. 6.*

Twelve inches make a foot.

Three foot make a yard.

*P. weights Measures of length. Inch. Handfull. Foot. Yard.*



Ell. Three foot and nine inches make an Ell.  
 Pace. Five foot doe make a Geometrical Pace.  
 Fadome. Seven foot maketh a fadome.  
 Pole. Five yards and an halfe ( which is 18 foot and an halfe ) maketh a pole, rood, or pearch, *ibid.*

And yet by the usage of many Countries, the pole doth vary ; for in some places it is 18 foot, and in some places 21 foot, and in other places 24 foot goeth to the pole ; and there if a man shall sell a certaine number of acres of wood, &c. it shall be measured according to the usage of the Countrey there, and not according to this statute ; for herein *Consuetudo loci est observanda*. See *Crompt. des courts. fol. 23. & 222.*

The same reason may seeme to hold of measures of corne by the bushell, see a little before.

Master *Osborne* writeth that the measure of 18 foot to the pearch ( or pole ) is commonly call'd woodland measure : 21 foot to the pole is called Church measure, ( *sc.* of land which now doth, or formerly did belong to the Church ; ) and 24 foot to the pole is called ( and that rightly ) Forrest measure.

Note that the Clarke of the Market may enquire of the pole, or pearch, whereby land is measured, as well as of other measures. *Crompt. Author. des Coirs. 221.* but the Iustices of Peace are not to meddle therewith, especially out of their Sessions.

Also note that no measure shall be sealed but the bushell, halfe bushell, peck, gallon, pottle, quart, and pinte, *Crompt. fol. 222. tamen quare.*

Furlong. Fortie pole in length maketh a furlong.  
 Mile. Eight furlongs ( or 320 pole ) maketh an English mile.

35. *El. ca. 8.* Note that our English mile contains 280 foot more than the Italian mile; the Italian mile being of 1000 paces, and five foot to a pace, and so the Italian mile is in length 5000 foot, whereas the English mile is 5280 foot in length ; 1760 yards.

Acres. Forty pole in length, and foure in breadth ( or 160 pole ) doe make an acre,  
 Pweights 4. *Stat. Compos. ultimum, & Stat. 34. Ed. 1.*

Plow-land. And ( by the opinions of M<sup>r</sup>. *Camden fol. 339.* and *Hollingshed, p. 13. impress. 1586.* ) one hundred acres is an hide of land ; but yet it seemeth that a hide of land ( or plow-land, or carve of land, which are all one ) are not of any certaine content. See hereof before, *tit. High-ways.*

A yard-land containeth in some places more, in some other lesse.

And yet M. *Norden* in his Surveyors Dialogue, *pag. 59.* saith, That every plow-land containeth commonly 120 acres : and that every plow-land is 4 yard-land ( in Latin called *quadrata terra* ) every yard-land containeth thir-

tie acres : And yet after some computation, every yard-land containeth but 24 acres : and this is the common account with us on the East part of Cambridge-shire.

Now that I have set you downe the contents of most weights and measures, you must further observe :

First, that in every County (*sc.* in the principall or shire towne there) there are (or ought to be) standards of brasse for weights and measures, (*sc.* for the bushell and gallon) according to the Kings standard of his Exchequer, there to remaine with the chiefe Officers of the same towne; according to which, every Citie, Borough, and Market towne within the sam County, ought to make them common weights and measures, to be marked by him that keepeth the standard.

Also in every Citie, Borough, and Market towne, there ought to be a common ballance, and a common bushell, and weights sealed, and according to the standard in their shire towne (as aforesaid,) upon paine to every Citie x.li. to every Borough 5.li. and to every Market towne xl.s. for their defaults.

Also no man within any City or Market towne, ought to buy or sell with any weights or measures, except they be sealed and marked in forme aforesaid (*sc.* according to the Kings standard, and by the officers in whose possession the Kings standard remaineth :) nor any other person out of a market towne, except their weights and measures be like and equall with the standard. See *Rast. fol. 531. ca. diu. 33.*

And yet it seemeth by the statutes 31. Ed. 1. & 8. H. 6. 5. (*Rast. diu. 3. & 26.*) that no man (though out of a Market towne) shall use weights or measures, nor other thing in the place of weight or measure, that is not sealed, according to the Kings standard, upon paine to forfeit the value of the goods weighed or measured, and two yeares imprisonment; and to bee fined and ransomed, and yeeld *quatreble* damages. See *Rast. tit. weights, & Crompt. 94. & stat. incerti temporis, cap. 8. Poulton, stat. at large, pag. 112.*

The Officer that keepeth the standard (in the shire towne) shall marke and seale other weights and measures, to all other the Kings subjects that shall require it; and they shall take for the marking of the bushell but 1.d. and for all other measures but an halfe penie; and for weights, for every hundred weight 1.d. and for halfe an hundred weight an halfe penie, and for every weight under, but a farthing.

*Now follow the names of the principall Townes in every Shire (or Countie) appointed to have the keeping of Standards for the weights and measures, according to these Statutes.*

<b>B</b> edfordshire, towne of Bedford.	London, the same citie.
<b>B</b> arksh. the towne of Reading.	Middl. the citie of Westminster.
<b>B</b> ristol, the same towne.	Norff. the citie of Norwich.
<b>B</b> uck. the towne of Buckingham.	North. the towne of Northampton.
<b>C</b> amb. the Univerſitie of Camb.	Northum. the towne of Newcastle.
<b>C</b> heſh. the city of Cheſter.	Notting. the towne of Nottingham.
<b>C</b> ornw. the towne of Luſtudiell.	Oxford, the Univerſitie of Oxford.
<b>C</b> umber. the city of Carlile.	Rutl. the towne of Uppingham.
<b>D</b> erb. the towne of Derby.	Shropſh. the towne of Shrewsbury.
<b>D</b> evon. the citie of Exceſter.	Sink-Ports, the caſtle of Dover.
<b>D</b> orſ. the towne of Dorcheſter.	Staff. the towne of Stafford.
<b>E</b> ſſex, the towne of Chelmeſford.	Somerſ. the towne of Ilcheſter.
<b>G</b> loc. the towne of Glouceſter.	Southampton, the same towne.
<b>H</b> ampſh. the citie of Wincheſter.	Suff. S. <i>Edmunds</i> Burie.
<b>H</b> ertſ. the towne of Hertford.	Surr. the towne of Guilford.
<b>H</b> ereſ. the towne of Hereford.	Suſſex, the towne of Lewes.
<b>H</b> unt. the towne of Huntingdon.	Warr. the towne of Coventrie.
<b>K</b> ent, the towne of Maidſtone.	Westmor. the towne of Appulbie.
<b>L</b> anc. the towne of Lancaſter.	Wiltſh. the citie of Salsburie.
<b>L</b> EIC. the towne of Leiceſter.	Worc. the citie of Worceſter.
<b>L</b> inc. the citie of Lincolne.	Yorkſh. the citie of Yorke.

Stat. 11. H. 7. cap. 4.

LEVIT. 19. 35, 36.

*Ye ſhall not doe unjuſtly in judgement, in line, in weight, or in meaſure : ye ſhall have juſt ballances, and true weights.*

PROV. 11. 1. & 20. 20.

*False Ballances, or devers Meaſures, are all an abomination unto the Lord.*

*Here alſo I will give a ſhort view of ſuch particular and private ſtatutes ( made onely for ſome particular Shires, Cities, or Townes ) as doe give ſome power alſo unto two ( or moe ) Juſtices of peace out of their Sessions. CAP. 66.*

Aldgate.  
Cardiff.

**F**OR paving of Aldgate ſtreect. 13. El. 23. & 23. Eli. 12.  
For the repairing of Cardiff Bridge, 23. El. 11.

For



For Iustices of Peace in Cheshire, &c. 27. H. 8. 5.

For repairing of Chepstow Bridge, 3. Jac. 23.

For Chichester Haven, 27. El. 22.

For paving Drurie Lane neere London, 3. Jac. 22.

See more here before. *titulo London.*

For repairing the High-way at Non-such, 3. Jac. 19.

For recoverie of marsh ground in Norff. and Suff. 7. Jac. 20.

For making Coverlet, and Dornicks there, 5. Ed. 6. 24.

For Recognisances to be taken of Lessees in Northumberland.

11. H. 7. 9.

For amending Bridges within five miles thereof, 18. El. 20.

For making the river of Thames navigable to Oxford, &c. 21. Jac. 32.

For repairing a Ferrey in the Isle of Shepey : See 18. El. 10. & 27.

Eliz. 26.

For laying out new High-wayes in Suffex and Kent, 14. H. 8. 6.

26. H. 8. 7.

See before, *tit. Purveyors.*

For repaire of Upton bridge, 3. Jac. 24.

For wages of the Knights of Parliament in Wales, 35. H. 8. 11.

§ For establishing Iustices of Peace in Wales, 34. H. 8.

§ For making of the bridge at Wilton over Wye, in the countie of Hereford, 39. El. 24.

Thus much concerning such statutes as the Iustices of Peace, out of their sessions of the Peace are to meddle withall.

Now for a conclusion of these statutes, and of the services of the Iustices of Peace therein, I wish them that in all cases where the whole matter is (by the statute) committed to the Iustices of Peace (to one alone, or to two Iustices, or more) out of their sessions, to heare and determine, &c. as where, upon his or their owne view, or by confession of the offender, or upon examination and prooffe of witnesse; (and without any inditement found or preferred) they may commit, or punish an offender as convict by such view, confession, or examination and prooffe; as also where they may proceed by enquire and inditement; that in every such case of such their judicall proceeding, they be led by no affection, but advisedly to examine and consider of, as well the fact it selfe, as of the circumstances, and then (in the feare of God, and according to law) to proceed and to see, or cause due and diligent execution of the punishment to be done upon the offenders, according to the quality and quantitie of their offence, and as the statutes themselves doe direct; for law without due execution and punishment of the offenders, is as a sheathed sword without any use or profit.

Cheshire.  
Chepstow.  
Chichester.

London.

Non-such.  
Norfolke.  
Suffolke.  
Norwich.  
Northumb.

Oxford.  
Shepey.

Suffex.  
Kent.

Universitie  
Upton.

Wales.  
Wilton.

But in all cases where the Justices of Peace have power to heare and determine out of their sessions (sc. upon their owne view, or upon the confession of the offender, or upon prooffe of witnesses) if upon such conviction the offender be to be committed to the Gaole, the Justices of Peace ought to make a Record in writing under their hands, of all the matter, and of the proofes, &c. which Record notwithstanding in many cases they may keepe by them, &c.

Also if upon such conviction the offender be to be fined to the King, then the Justices of Peace are to estreat such fine, & to deliver, or send the estreat into the Exchequer, whereby the Barons of the Exchequer may cause the said fine (or forfeiture) to be levied to the Kings use.

And here I will shortly point you out some particuler offences, which by the statutes are referred to the Justices of Peace to heare and determine (out of their sessions) as aforesaid, and will leave the rest to your owne search.

1 Some particulars where one Justice of Peace upon his owne view, or One Iustice hearing (of the offence) may punish the offenders.

Alehouse-keepers, &c. suffering townesmen, or any other person, to continue drinking in their houses contrarie to the statute, 1 *Iac. cap. 9.* & 21. *Iac. 7. vide antea tit. Alehouses.*

Townesmen, or strangers tipling in Alehouses, &c. contrary to the statute 4. *Ia. cap. 5.* & 21. *Iac. cap. 7. ibidem.*

Persons that shall ride, or goe armed, contrary to the statute, 2. *E. 3. cap. 5.* *Vide antea tit. Armor.*

Persons that shall have any Teinters, &c. for the deceitfull stretching of cloth, *Vide antea tit. Cloth.*

Offendors in Forcible Entries, or detainers, contrary to the statutes: see *antea tit. Forcible Entry.*

Keepers of places for unlawfull gaming, *Antea tit. Games unlawfull.*

Players in such places, *ibid.*

Players at unlawfull games wheresoever contrary to the statutes, see as before.

Swearing prophanely, or cursing, in the hearing of any Iustice of Peace, &c., *Antea tit. Swearing.*

2 Where one Iustice of Peace may punish offenders as convict upon their owne confession.

Alehousekeepers, Inkeepers, or Victuallers, suffering townesmen, or strangers, to continue or be tipling in their houses, &c. See *Antea tit. Alehouses.*

Townesmen, or strangers, continuing tipling in any Inne, Alehouse, or Victualling house, see *ibidem.*

Sheriffs, &c. entring plaints in their courts unduly, *V. antea tit. Sheriffs.*

Persons

Persons not repairing every Sunday to Church, see *antea tit. Recusants.*

Prophane swearers, or cursers, *hic antea tit. Swearing.*

Trespassers in Corne, Orchards, or Woods, &c. contrary to the Stat.

43. *El. 7. Vide antea tit. Trespasse.*

Offences in Tyle making, contrary to the stat. *Vide antea Tyle.*

Offences in Watermen, contrary to the stat. *Vide antea Watermen.*

3 Where one Justice of Peace may punish offenders as convict upon examination, and oath of witnesses.

Alehouse-keepers, &c. suffering townesmen or strangers to be tipling in their houses contrary to the stat. 1 *Ja. & 21. Ja. V. antea tit. Alehouses.*

Alehouse-keepers, &c. selling lesse Beere, or Ale, than according to the statute 1 *Ja. ibid.*

Townesmen, or strangers, tipling in Alehouses, &c. contrary to the stat.

4. *Ja. cap. 5. ibid.*

Persons not repairing every Sunday to Church, they may bee convicted upon the oath of one witnesse, *Vide antea tit. Recusants.*

Prophane swearers, or cursers, *hic antea tit. Swearing.*

Transporters of corne, &c. *Vide antea tit. Transportation.*

Trespassers in corne, orchards, or woods, &c. they also may be convicted upon the oath of one witnesse. *Vide antea tit. Trespasse.*

And yet here, and in all cases of conviction upon the oath of witnesses, the offender himselve must also be heard speake, and bee examined by the Justice of Peace, &c. Or else it is no lawfull conviction, See *hic cap. 7. & hic infr.*

4 Where one Justice of Peace may punish offenders, as convict upon examination generally, the statutes not shewing what persons shall be examined; in which cases it seemeth the Justice of Peace may thereupon examine as well the offenders themselves, as other witnesses.

The defaults of the Collectors of the Sheriffes amerciaments: as also of Balifes of hundreds, *Vide antea tit. Sheriffes.*

Offences in tyle making, *Vide antea tit. Tyle.*

Offences in Watermen, *Vide antea tit. Watermen.*

5 Where one Justice of peace may punish offenders, upon accusation or prooffe, generally; which accusation, or prooffe, must be by examination of witnesses onely (as it seemeth.) And yet the party delinquent is (here also) to bee first heard, before hee bee convicted or condemned, *ut supra.*

Offenders in keeping, or using Guns, or Crosse-bowes, &c. contrary to the stat. *Vide antea tit. Guns.*

Disturbers of Preachers, *Vide antea tit. Preachers.*

Souldiers



Souldiers that have purloyned their horse or harness, *V. antea tit. Sould.*

Note, that in these former cases, and in all other cases where the Iustice of Peace is to take such examination of witnesses, or such other accusation or prooffe, aforesaid, though the stat. doth not expressly set downe that it shall be upon oath, yet it seemeth fit, that the Justice doth it upon oath: for *M. Brooke* (sometimes chiefe Just. of the common Pleas) was of opinion that every examination ought to be upon oath: and *M. Lamb.* 517. was also of opinion, that these examinations taken by the Iustices of Peace ought alwaies to be upon oath, the rather because the triall in these cases dependeth wholly upon these examinations; yea in all other cases wheresoever any man is authorised to examine witnesses, such authority to examine shall be taken and construed to be in such manner as the Law will, which is only by oath. *V. postea tit. Examination. cap. 3.*

*Pl. 12.2.*

Also where the matter is to be tried by witnesses onely, it is fit there be two witnesses at the least (except where the statute doth expressly allow the oath or testimony of one witness.) And so was the opinion of *M. Brooke*, that in such case there ought to be two witnesses at the least; and agreeable thereto also is the Booke and word of God, *Matth.* 18. 16. *2 Cor.* 13. 1. *Pl. 12.4.* Otherwise it is, where the triall is by a jury of twelve men, there one witness sufficeth, yea there many times witnesses are not necessary, See *Pl. 12.4. & ibid. cap. 3.*

*Deut. 17. 6.*

*19. 15.*

*Two Just.*

Where two Justices of Peace (out of their Sessions for the peace) may punish offenders as convict before them, upon the confession of the offender, or upon examination of witnesses, or upon their owne view.

Clothiers refusing to pay the wages assessed, &c. see *antea tit. Cloth.*

Spinsters, &c. which shall imbecill any part of their wooll contrary to the statute 7. *Iac.* 7. (upon prooffe of one witness.)

Clothiers making deceivable woollen cloth. 21. *Iac.* ca. 18. *hic ant. tit. Cloth.*

Servants & labourers assaulting their master, see *antea, tit. Labourers P. 12.*

Servants departing refusing to serve, or taking excessive wages, &c. see *tit. Labourers, P. 4. 6. 14.*

Persons restrained from mauling, &c. see *antea tit. Mauls.*

Destroyers of Partridges, or other fowle, or of their eggs, or of Hares, or keeping hunting dogs contrary to the sta. 1. *Ia.* 27. see *antea tit. Partrid.*

Destroyers of Fefants or Partridges, contrary to the stat. 7. *Iac.* 11. upon prooffe of one witness, *ibid.*

Such as shall put out of their parish (as poore persons) those that be not to be put out, *Vide antea tit. Poore.*

Also the defaults of the Overseers of the poore, *ibidem.*

Disturbers of Preachers, *Vide antea tit. Preachers.*

Offenders

Offendors which shall disturb the execution of the Statute for rogues; and officers which shall be remisse and negligent therein, &c. *V. an tit. Rogues.*

The defaults of officers and others, touching weights and measures, *V. de antea tit. V. Weights.*

But note, that this manner of triall by examination of the offenders or witnesses, is not permitted to Justices of peace, but onely in cases where either the statutes do generally refer the triall to their discretions, or else do specially authorise them to take the examinations.

And in all these former cases, where the Justices may hear and determine, or may punish offenders as convict upon their own confession, or upon examination of witnesses (it seemeth in congruity) the Justices of peace may grant out their Warrants against such offenders, (or at least ought to send for them) to appear before them to answer to their said offences: and thereupon may proceed to examine, hear, and determine the offences.

Where one or two Justices of peace may hear, and determine, by inquiry and indictment taken before them, out of their generall sessions as it seemeth.

Defaults of Sheriffs and Bailiffs, in not returning sufficient jurors to inquire of Forcible Entries, *Vide antea tit. Forcible Entrie.*

Offendors in Riots, *Vide antea tit. Rior.*

Transporters of corn, &c. *Vide antea tit. Transportation.*

Offences committed in Tyle making, *Vide antea tit. Tyle.*

Defaults as well of officers, as of buyers, and sellers, with unlawfull weights or measures, *Vide tit. Weights, &c.*

And in these cases, the offence being found upon such Enquiry, these Justices have authority, not onely to make out Process against the offenders, under their own *Teste*, but also to fine them, and to commit the offenders to prison till they have payd their fine, and to deliver them upon payment of the same, or upon sureties given for it: or otherwise (it seemeth) the Just. may receive the traverse of the offenders, &c. for to all these effects, the words (in those statutes) Hear and Determine, do seem to leade and inable the said Justices.

Also in these cases, the Justices Precept to the Sheriff, to return a Jury before them, may be in this or the like form: and either in the Kings name, or under the name of the Justices, &c.

*Jacobus Dei grac' Rex Anglia, &c. vicecom. Cantabr. salutem. Precipimus tibi quod non omittas propter aliquam libertatem Comit' tui, quin. m. cap. 13. vires fac' coram Justic' nr's de pace in comitat' pred. conservand' assign' apud*

*Linton in Comit. præd die Julii. proxim sequent 24 probos & legales homines de Hundred de Radfield & Chilford ad audiend & faciend ea que, ex ex parte nostr. ibidem tunc fuerit injungēd. Et habeas tunc & ibide hoc mandatum. Teste Mi. D. (apud Westwratting) tali die, &c.*

Surety for the Peace. CHAP. 67.

**Lam. 77.** Surety for the Peace, is the acknowledgement of a recognisance (or Sbond) to the King (taken by a competent Judge of Record) for the keeping of the peace: and it is called surety, of the word *Securitas*, because the party that was in fear, is thereby the more secure and safe.

**F.N.B. 79.b.** This surety for the peace, every Justice of peace may take and command in two manners, or by a twofold authority.

**Lam. 77.** 1. First, as a minister (commanded thereto by a higher authority) as when a Writ of *Supplicavit*, directed out of the Chancery, or Kings Bench, is delivered to his hands: upon this writ that Just. of P. only (to whom such Writ is delivered) is to direct his Warrant to cause the party to be brought before him (alone) to find sureties for the peace. And therein the said Justice is to do in every behalfe, according as the same Writ doth direct him.

See more concerning this Writ of *Supplicavit*, &c. *postea sub hoc tit. Surety for the Peace. cap. 73.*

2. Secondly, as a Judge, (and by vertue of his office, and of his owne power derived from his Commission) he may command this surety of the peace to be found; and that either of his owne motion and discretion, or else at the request or prayer of another.

**upon discretion.** The justice of peace upon his own motion and discretion, may (if he see cause) command surety of the peace to be found, or may binde a man to the peace (and that against all the kings subjects, if the justice shall so thinke meet) in these cases following.

**§ H. 7. 62.** 1. One that maketh an assault, or affray, upon the just. of P. himselfe, the justice may cause or command him to be arrested or attached, and carried presently before another justice of P. who may commit him to prison, till he hath found sureties for the peace. *Vide hic cap. 120.*

**PR. 18. 19.** 2. Such as in his presence shall make an affray upon another, or shall strike, or assault, or offer to strike another, the justice may commit him to prison, untill he hath found sureties for the peace. *Vide antea tit. Affray & br. fx. impris. 12.*

3. So of such as in his presence and hearing shall threaten to kill, beat or hurt another, or to burne his house.

4. So of such as in his presence, shall contend onely in hot words, for from



from thence oftentimes doe ensue Affraies and batteries, and sometimes I.R. 18.  
maimes, yea manslaughters and murders.

5 So of such as in his presence shall goe or ride, armed offensively, or with an unusuall number of servants or attendants: for these are accounted to be an affray and feare of the people, and a means of the breach of the peace: so of servants and labourers, that shall beare any weapons, contrarie to the statute of 12.R.2. *Vide antea tit. Armor.* See Cro. 76. 143. P.R. 4.

6 Also he may binde to the peace any other person, to him suspected to be inclined to the breach of the peace. 9 Ed. 4. 3. P.R. 18.

7 If (out of the presence of the justice of P.) any man shall threaten to kill, maime, or beate another, or doe attempt, or goe about to doe it: then any Constable being present may arrest such offender, to come before a justice of peace to finde sureties for the peace: and the justice may binde him to the peace. Cro. 135. & 143. P.R. 22. Fi. Bar. 202.

8 If any Constable shall perceive any other persons in his presence to bee about to breake the peace, either by drawing weapons, or by striking, or assaulting one another, or by assaulting the Constable himself, he may take assistance, and carry them all before the justice to finde sureties for the peace, and the justice may binde them. 1 H. 7. 7.

9 If the Constable shall learne that certaine persons bee fighting or quarrelling in a house, hee may breake open the doores and arrest them, and carry them before a justice of peace to finde suretie of the peace: and the justice may binde them. P.R. 22.

10 Yea, the justice of peace (either upon his owne discretion, or upon any mans complaint) may make his warrant, for any such as have made an affray (though out of his presence) and may binde them to the peace. *Vide antea tit. Affray.*

11 If one hath received a wound, it seemeth the Justice of peace may take suretie of the peace of the one and the other, (by his discretion) untill the wound be cured and the malice be over. *Popham* late Lord chiefe ju. of England (an honorable and grave judge) did accordingly between *James* and *Benton* at Cambridge Assises, 3. Jac. See Br. Peace 21. 27. Aff.

12 All such as shall goe or ride armed (offensively) in Faires, Markets, or else where; or shall weare or carry any guns, dags, or pistols charged; it seemeth any Constable seeing this, may arrest them, and may carrie them before the Just. of P. & the Just. may bind them to the P. yea though those persons were so armed or weaponed for their defence upon my private quarrell, &c. for they might have had the peace against the other persons: and besides, it striketh a feare and terror into the Kings subjects. 2 E. 3. 23. Com. mission.

See more *hic antea tit. Affray and Armor.*

13 Also the Justice of peace (upon his discretion) may binde to the peace a common Barretter. *Vide tit. Barretter.*

14 So of Ryotters. *Vide tit. Ryotters, & Lamb. 79.*

1 E. 4.

40.

Br. Peace

17. Lamb

117.

Crom.

142.

15 He that standeth bound to keep the peace, if he hath broken (or forfeited) his Recognisance, the Justices of peace may and ought of discretion to binde him anew; but yet by good opinions, that must not be done untill the party be convicted of the breach of the peace, upon his Recognisance; for before his conviction, it resteth indifferent whether the Recognisance be forfeited or no: But after that he is thereof convicted, & that the forfeiture be levied, the Recognisance is then utterly determined; & then he is to be compelled to find new surety, or else to be sent to the Gaole.

So it seemeth, though the forfeiture be not levied, yet if the party bee convict for breaking the peace, he shall be bound of new. *Crompt. 141. & Br. Recog. 21.*

16 Also he that standeth bound to keepe the peace, if his sureties be insufficient, the same justice, or another just. of the peace, may compell him to find better sureties.

And in many of the former cases, the justice of peace ought (of duty, or at least in good discretion) to command this surety for the peace, although the same be not required by any other person: And if any such person shall refuse to give such surety, the just. of peace ought to send him to prison, there to remaine untill he shall finde such surety.

9 Ed. 4. 3

Br. Peace

8.

If a justice of peace (upon his owne discretion) shall cause one to bee arrested to find sureties for the peace, and shall after let him goe without taking suretie, or binding him to the peace, yet the party hath no remedie: for an action will not lye against the justice of P. for this, he being a judge of record. See 9 H. 6. f. 60. & 9 E. 4. f. 3. *Br. Judges 2. 10. & Br. f. x. imp. 12. & hic cap. 46. & 120.*

Lamb. 80

P. R. 18.

A justice of peace may perswade a man require the surety of peace against another, and he himselfe may grant a warrant for it, because it is no more then he might have granted of his owne authoritie, without any demand made; & it shall be presumed that he saw cause to doe all this.

Upon re-

quest.

Also at the request or prayer of another, the justice of peace may command this suretie of the peace, and may grant his warrant for it.

R. N. B.

79. h.

Lamb. 84.

85.

But here the just. of Peace must and ought first to take an oath of the party that demandeth the peace; which oath must be to this purpose, *sc.* That he standeth in feare of his life, or of some bodily hurt to be done to himselfe, or to have his houses burned, (and that hee doth not crave the peace for any private malice, or for vexation; but of very feare, and for the needfull safety of his body, or houses;) for the words of the

Com-

Commission herein are, *Et ad omnes illos qui alicui, vel aliquibus de populo nostro, de corporibus suis, vel de incendio domorum suarum, minas fecerint, ad sufficientem securitatem de pace, &c. inveniendam, &c.*

So he that shalbe threatned to be hurt in his body (sc. to be beatē, wounded, maimed or killed) the party so threatned may crave, and have the surety of peace, against the other, & it is to be granted properly in such cases.

Also if a man do fear that another will kill, maime, beate, assault or hurt him in body, he may crave the peace against such other person. Fitz. 79. g. h.

So if a man do fear that another will burn his house.

So if a man do fear that A. wil procure or cause any such hurt to be done him by another, either in his body, or in his houses; for the words of the Recognisance be, *Non faciet, nec fieri procurabit.*

So if a man lieth in wait to beate, kill, or hurt another, it is good cause to require this surety, *Crompt. 135.* Crompt. 135. a.

*Vnc' nota les parolz deūt in le Comissiō, Minas fecerint &c. per quex parolz, scē que per le Commission, le peace nec deē grant sur ascun request, ne autrement' Sinon tantūm lou home est manasse. et pur ceo lou A. craved le peace versus B. pur ceo que B. usa de vaer ove un Pistol, et le Justice. de p. sur ceo granted le peace, Sir Nich. Hyde blamed le Justice, disant que il ne devoit aver lye B. a le peace, pur ceo que il n'ad manasse A.*

If a man be threatned to have his goods burned, it semeth by the opinion of M. Fitz. that he may demand surety of the peace for this: *quare tamen*, because he may recover his goods, or damages for and to the value of the same, *Co. l. 255.* Lamb. 84.

And where a man shall threaten to imprison another, it is holden that the peace shall not be granted; for that the party wronged may have his action of false imprisonment, or a writ *de Homine Replegiend'*, and so shal recover damages for his imprisonment. 17 Ed. 4. 4. Br. Peace 123.

Yet inquire hereof; for to threaten imprisonment, is within the words *Minas de corporibus*: and like harm may happen to a man by hard imprisonment, as by cruell beating of him: And to threaten imprisonment is a cause to avoid a deed or bond, as well as to threaten to kill, or maime one, &c. 39 *H. 9. Br. Duress. 6. vide Co. l. 253.* Lamb. 85. F. N. B. 80. g. Lamb. 86.

Where a man is in feare, that another will hurt his servants, or his cattell, or other goods, this surety of the peace shall not be granted by the justice of peace: But in this case M. Fitz. saith, the party may have a speciall Writ out of the Chancery directed to the sherife, that he shall cause such person to finde surety, that he shall do no hurt or damage to the other man in his body, or to his servants, or goods. And if he will not find surety, that then he shall arrest and detain him in prison, untill he shall finde



find surety : and that the sherife shall certifye all that he shall doe thereupon, into the Chancery, &c. And it seemeth the sherife ought to take such surety, by Recognizance. And yet if a man shall threaten to hurt my servant, or my wife, or child, I see no cause but that in their behalfe I may crave the peace at the justices hands, by the words of the Commission, and that the justice ought to grant it.

If a man will require the peace because he is at variance, or in suite with his neighbor, it shall not be granted by the justice of peace,

Br. F.  
imp. 41.  
I.R. 14.

Note also, the surety for the peace shall not bee granted, but where there is a fear of some present or future danger, and not meerly for a battery, or trespassse that is past, or for any breach of the peace that is past : for this surety of the peace is onely for the security of such as are in fear.

Now *Metus, est presentis vel futuri periculi causa mentis trepidatio* : And so this surety is, *providere presentia, & futura, & non praterita*.

And as for a battery, or other like Trespassse that is past, the party wronged may have his action of Trespassse of battery, &c. or may punish the offender by indictment at the Kings suit: and yet in such case the Justice may (if he see cause) binde over the affrayor *Vide antea*.

If the Justice of Peace shall perceive that this surety for the peace is demanded meerly of malice, or for vexation only, without any just cause of fear, it seemeth he may safely deny it. As in common experience we finde it. That where *A.* shall upon just cause come and crave the peace against *B.* and hath it granted to him; when *B.* shall come before the Just. *B.* likewise will crave the peace against *A.* (and will perhaps surmise some cause) but yet will neverthelesse be content to surcease his suit and demand against *A.* so as *A.* will relinquish to have the peace against him; here the Just. of P. shall do well (as I think) not to be too forward in granting the P. thus required by *B.* but to perswade with him, and to shew him the danger of his oath which he is to take; but yet if *B.* will not be perswaded, but will take his oath that hee is in fear (where indeed hee neither doth fear, nor hath cause to fear) this oath shall discharge the Justice, and the fault shall remain upon such complainant.

And when the justice hath so granted the peace to one that (in the justices judgement) shall crave or require it only out of malice or for vexation, the just. may presently in good discretion binde him to the good behaviour, that so required the peace.

For Whom, and against Whom this Surety of the Peace shall  
be granted. CHAP. 68.

THE Law hath conceived such an opinion of the peaceable condition of Noblemen, that it hath been thought enough to take one of their promises upon his Honour, that he would not break the peace against a man. *Br. Contempts* 6. 24 E. 3. 3. & 17 E. 4. 4.

And therefore if a man shall have cause to have the surety of the peace against a Lord of the Parliament, or such great and noble personage, hee shall not have a warrant from the Just. of Peace to that purpose; nor yet have a *Supplicavit* out of the Chancery, directed to the Just. of P. therefore: but if there be cause, he may have a *Subpœna* out of the Chancery (of common right, as it seemeth) and there such Lord or Nobleman shall be bound to the P. And yet if such Lord will not appear upon the *Subpœna* served, *quare*, if an Attachment will lye against him upon such his default. *M. Crom. f. 134. b.* saith that it was holden in the case of the L. *Cromwell*, in the Chancery, about 18 E. 1. That an Attachment lieth not against a Lord where he maketh default upon a *Subpœna* against him out of the Chancery, *Dyer* 315. seemeth to accord.

But though it be true, that the person of a Baron (who is a Peer of the Parliament) shall not be arrested (for or in cases of debt, or trespass, &c.) by his body, first in respect of their dignity, secondly in respect that the law presumeth that they have sufficient lands and tenements, wherein they may be distrained, yet in cases of contempt it seemeth they may be arrested by *Capias*, or Attachment, &c. *V. 27 H. 8. f. 22. b.*

Or els (it seemeth) that the party may crave the peace in the Chancery, against such Lord or Peer (*sc.* to have a *Supplicavit* directed to the sheriff) and then the sheriff may and ought to execute the same: and if the sheriff shall not do his office therein, an *Alias Plur.* and Attachment lieth against him. And if the sheriff shall return, That such Lord is so puissant that hee cannot arrest him; upon such return the sheriff shall be grievously amerced (for he might have taken *Posse comitatus*, *sc.* he might have levied 300 men by his discretion, if there had been need, to have aided him in such case.) And if such Lord or Peer, who is by the sheriff so arrested, shall refuse to obey the arrest, and shall make a *Rescous*, wherupon the sheriff shall return a *Rescous*; hereupon shall there be an Attachment granted out against such Lord, to arrest and take his body for such his contempt.

The same law & remedy seemeth to be where a man hath cause to have the surety of the peace against a Dutchesse, Countess, or Barones; for they are Peers of the Realm, and shall be tried by their Peers, although in respect

Noblemen

Fitz.  
Subp. 20.

Co. 6. 33

11 H. 4.  
15. Br.  
Repl. 19.  
Co. 9. 49Fitzherb.  
Subp. 20.F. N. B.  
79. g.Crom.  
134.

Co. 6. 33

53. 20 H.  
6. 9. S. 1.  
152, 153

respect of their sex they cannot sit in Parliament: and they are in the same degree (as concerning their Nobility, and the priviledges incident to their dignities) with Dukes, Earls, and Barons. But here note this diversity, *sc.* if such woman being a Countesse, or Baronesse, &c. by marriage only, shall marry again under the degree of Nobility, she hath thereby lost her name of dignity (together with the priviledges of her said nobility also, as it seemeth) for in such a case, *Si mulier nobilis nupserit ignobili, deserit esse nobilis*, and that which was gotten by marriage, may also be lost by marriage; for *Eodem modo quo quid constituitur, dissolvitur*; But if she be noble by birth or discent, whomsoever she shall marry, yet she remaineth noble: for birth-right *est character indelebilis*. Vide Dyer 79. & Br. Nofme de dignitie, 31. & 69. & Co. lib. 16.8.

Co. ibid.

And yet by the Curtesie of England, if women get to any degree of estate, they never lose it by marrying after more meanly, but do still take place according to the estate of their first husband.

Surety of the peace may be granted by the Justice of P. against a Knight and against all other lay persons, being under the degree of a Baron or Peer of the Realm, and they shall be bound with sureties.

36 H. 6.

23. Br.

Moigne.

34. &amp; 35.

Ecclesiasticall persons (if they be not attending upon Divine Service) may be arrested for the peace, and they shall be bound with sureties: But whilest they are doing any Divine Service in the Church, Churchyard, or other place dedicated to God, they may not be arrested, 50 Ed. 3. 5. P. Arrests 1. See stat. 1 R. 2. cap. 15. & 1 Ma. c. 3.

Surety of the peace may be granted against the Sheriff, under-Sheriff, coroner, escheator, & other such officers of Justice. But M. Marrow adviseth, that such persons be not bound *versus cunctum populum*, but onely against such persons as shall demand it, lest otherwise it should argue them unworthy and unmeet to bear or exercise any such office in the commonwealth, if there should be cause to binde them *versus cunctum populum*.

*Si in ouert Sessions un Just' de peace abuser auter Justice de P. semble que les auters Justices poit luy luyer al peace. Crompt. 122. a. Quare sil ne manasse l'auter?*

One Justice of peace may grant this surety to any man, against one of his fellow Justices (and yet the Commission is joynt;) but great discretion is herein to be used.

Yea a Justice of peace, upon demand, may grant this surety of the P. against his own wife: and yet he and his wife are but one person in law.

If surety of the peace be demanded against a Juror at the Sessions, it is grantable; but yet the same would not be granted or done before the Sessions be ended.

One



One justice of peace may demand this surety of the peace (at the hands of his fellow justice) against another man.

If a man hath cause to have surety of the peace against one dwelling in the *Cinque Ports*, he must have a Writ out of the Chancery, directed to the Constable of Dover, and to the Warden of the *Cinque Ports*: the forme thereof, see in *Fitz. N.B.*

*Fitz. n. b.*  
90.

The wife may demand this surety against her husband, (if he shall threaten to kill her, or outrageously to beat her, or if the wife hath any notorious cause to feare that hee wil do so) and it shall bee granted her by the justice of peace, or shee may have it by *Supplicavit* in the Chancery, *Fitz. 238. f. Br. Peace 23.*

Wife.  
*Fitz. 80.*

The husband, for the like causes, may demand surety of the peace against his wife. *Et si el ne poit troue Sureties, el serra commit, &c. & issint home poet este rid dun Shrew.*

Also the justice of peace, upon his own discretion, may in either of the aforesaid cases between the husband and wife (especially happening in his presence) grant surety of the peace.

An Infant under the age of fourteene yeares, may demand this suretie, and it shall be granted him.

*Lam. 81.*

Also this surety of the peace may be granted at the Prayer of any person against a *feme covert*, or against an Infant though hee be under 14 years of age. (For if an Infant, under 14 hath discretion to demand the peace, &c. then hath he discretion to break the peace.)

But an Infant, and a *feme covert*, shall be bound by sureties only, and they themselves shall not bee bound, and if they cannot find sureties, they shall be committed to prison untill they have found sureties. And yet if an Infant shall be bound to the peace, &c. by Recognisance taken by a justice of P. it seemeth he shall estopped to avoid such a Record, if he doth not avoid it during his minority, for it is not void but voidable, by *Audita querela* during his minority. *Dyer 232.*

Co. 18.  
43.  
Crompt.  
239.9.

But if a *feme covert* shall be bound, or acknowledge such a Recognisance (though her husband joyn therein with her) yet it is meerly void as to the wife, although she over liveth her husband.

A man of *Non sana memoria*; this surety shall neither be granted against him, nor to him upon his request; and yet if there shall bee cause, the justice of Peace (upon his discretion,) ought to provide for his safetie.

A man that is Lunaticke (*scz.* who at some seasons hath the use of reason, and at other times not) it seemeth this surety of the peace may be granted against him; and also that he may demand the same against another.

See Co. 4  
114. &  
11. 77.

And if one of *non sane memoria*, or a Lunatique, be himselfe bound by Recognisance before a justice of peace, to keepe the peace, it seemeth such Recognisance shall binde them, and all others for ever.

But *quare*, if there bee not a difference to be taken herein, where a Recognisance by an Infant, or one that is *non compos mentis*, shall be acknowledged in a Court of Record, or in open Sessions, and where before a justice of P. out of the Sessions.

A man that is deafe, dumbe, and blinde, be it naturally (*sc.* that he was so borne, ) or accidentally, he shall not haue this surety granted to him, for he hath no understanding to aske it, and yet for such a person, (or any other person not having reason to demand the P. ) if there be cause the justice of P. upon his discretion ought to provide for their safetie.

A man that is borne dumbe and blind, may have understanding; and therefore it seemeth this surety may be granted to him, or against him.

But a man that is borne dumbe and deafe can hardly have understanding; for though the sight be the chiefeft sense, yet by hearing we come chiefly to knowledge, and therefore it seemeth not grantable to him, or against him. See *Stamf. de Prærog. fol. 33, 34. Col. 135.*

And yet a man this is dumbe and deafe, or blinde and deafe accidentally, may have understanding, and therefore this suretie may bee granted to him, or against him.

Also this surety of the peace may bee granted against an impotent person, although he be such a one as is not like to breake the peace himselfe; for he may procure another to kill or beat one: and the common forme of Recognisance is to binde a man from procuring hurt, as well as from doing hurt.

This surety of the peace may also be granted to, or against, a man attainted of treason or felonie.

The like law of him that is convicted of Heresie.

Crom.  
134.

A man excommunicate may have this surety granted to him, or against him.

So also of a man that is abjured the Realme; for notwithstanding the abjuration, he oweth the King his leageance, and remaineth within the kings protection; and the king may pardon and restore him againe: *Qui abjurat regnum, amittit regnum, non regem, Co. 7. 9. b.*

A man attainted in a *Premunire*, may (at this day) require, and ought, to have this suretie granted to him; *P. R. 19. Cromp. 133.*

Crom.  
134.  
P. R. 19.

An alien borne, who is made Denizen, may have this surety; and so of an alien born, who liveth in England under the Kings protection (although he be not made Denizen.)

And

And so of an Alien, whose King is in league with our King; or if there be no Wars between this Realm and that Realm whereof the alien is, for by the Common-Law, all these may get and have within this Realm any personall goods, and may sue for the same, and so have the benefit of the Kings Laws and protection. But an alien who is the Kings enemy (*sc.* where there is open War between our King and his King) shall not have this surety granted to him, nor any other benefit of the Kings Laws. Co. 7. 17. Dyer 2.

Who shall be said to be an Alien. See *Co. 7. 16, 17.*

In *Calvins* case, *6. Ja. Reg.* there is a difference taken between *Antenati* and *Postnati*, in Scotland, where it is holden that *antenati* in Scotland, *sc.* such as were born before the Kings happy comming to the Crown of England, are here aliens born; the reason is, for that at the time of their birth, they were under the leageance and obedience of another King; and he could not be a subject born of the Kingdom of England, that was born under the leageance of a King of another kingdom. And yet it is manifest that *antenati* being the Kings subjects, are herein provided for, by the commission it selfe; the words whereof are, *Et ad omnes illos qui alicui vel aliquibus de populo nostro, &c.* of which number *antenati* be; so as they may and ought to have this surety granted them, as well as any other subjects. See *Dyer fol. 304. & Pl. fol. 306. a.* Co. 7. 18.

An Irishman born is a naturall born subject, and capable of, and inheritable to lands in England, and therefore may have this surety. Co. 7. 23

But it may be questioned, whether an Infidell, Pagan, or Jew, shall have this surety granted them; For in law they are *Perpetui inimici*, There is between the Christians and them perpetuall enmity, and can be no peace: Neither can they get any thing within this Realm, nor maintain any action at all, *12 H. 8. 4.* Co. 7. 19

A Villain or Bondman may have this surety of the peace against his Lord, and the Lord may have it against his Villain, and yet it maketh no manumission, although it were demanded by the Lord without any protestation, &c.

*How this surety of the peace may be commanded, and how the same commandement shall be executed.* CHAP. 69.

**T**HE Iustice of Peace may command this surety of the peace, either by word only, or by writing.

1. By word only, the party being in his presence; as if in the presence and hearing of the Iustice of peace, one man doth threaten another, or shall make an affray, or assault upon another, or do other like thing tending to the breach of the Peace, the Iustice of peace may command him by word to finde sureties for the peace. By words  
14 H. 7. 8



24 H. 7. 9. Also if one shall demand this surety against another, who is then in the presence of the Justice of peace, and will be sworn that he is afraid of him, the Just. may by word command the same partie to finde sureties for the P.

14 H. 7. 8, 9. And the Just. of peace in such cases may by word only command the Constable, or any other known Officer (or his own servant) being then present, to arrest such party to finde sureties for the peace, (and to take the party into his or their custody, &c.) And if the party shall refuse to finde such sureties, then the Just. of P. may commit him to the gaol.

But if the party (against whom this surety of the P. is demanded) be absent, it is otherwise; for a Justice of Peace cannot send for any man, or command any man to be arrested, or brought before him, or to be imprisoned, who is not in his presence, by word only, but he must make his Warrant or Precept in writing. And *Popham*, chief Justice, said, That the Justices of the Kings Bench, when they send for any of the Kings subjects, it is either by Writ, or by a Warrant, or by a Tipstaff: but the Tipstaff (said he) is by subscription, except that the party be in Westminster Hall, &c. See the case between *Woddy versus Bokers & Read-head: Termino Mich. Ann. 2. Jacob. Regis. Rotul. 480. in Banco Regis.*

By writing.

This Precept or Warrant then must be made in writing, and under the Justice his seal; and must be directed to some officer, or other indifferent person, and must contain the cause, and at whose suit, to the intent the party to be bound, may provide his sureties, and take them with him.

The form of which Precept, see *postea tit. Warrants, cap. 121.*

Co. 5. 59  
Br. Peace

9. The Justice of Peace may make his Warrant to bring the party before himself (to finde surety for the peace) by the opinion of *Wray*, chief Justice; for he that maketh the Warrant, for the most part, hath the best knowledge of the matter, and therefore he is the fittest to do Just. in such case. And yet the most usuall manner is, to make such a Warrant, to bring the party before the same Justice, or some other of the Justices of P. of the same County, &c. And Judge *Finewx* his opinion was, That where  
21 H. 7. 21. a Justice of peace doth make any Warrant for the peace *ex officio*, (*sc.* by force of the Commission, and not by vertue of a *Supplicavit*) there the party may chuse to appear before him or any other Justice in that County: and that the party may have his action of false imprisonment against the officer, if he do otherwise compell him. Otherwise it is in the execution of the Writ of *Supplicavit*, as you may see here *postea sub hoc titulo.*

Who may serve this Warrant, and whether the officer may make his deputy; and whether they need shew their Warrant or no; and whether they may break open the doors, &c. see hereof *tit. Warrants postea cap. 117.*

The

The Constable (or other officer) before he arrest the party, upon such a Warrant, ought first to acquaint him with the matter, and withall, to require or charge the party in the Kings name, to go (with him) before the Just. to finde and put in sureties according to the Warrant: and if the party shall refuse to do this, *sc.* shall refuse either to go before the Justice, or to find sureties, then the officer (by the words of the Warrant) may and ought forthwith to arrest him, by vertue of that Warrant, and may convey him to the gaol without carrying him to any Justice, and there the party shall remain untill he shall voluntarily offer and finde sureties: and then such officer ought to be at the next Sessions of the peace, there to deliver in his said Warrant, and to certifie all that he did thereupon.

But if the party shall yeeld to go and finde sureties, then the Officer may not absolutely arrest him: But yet the Officer is not bound to go up and down with the party, to finde sureties, but may keep the party untill he can procure sureties to come to him: and if afterwards the party shall make any resistance, or shall offer to go his way, then the officer may arrest him, and by vertue of that Warrant may carry him to the gaol, and may also imprison him in the Stocks, untill he can provide aid to carry him to the gaol.

When the partie commeth before the justice of P. by force of this warrant (or by force of any otherlike warrant for the peace, good behaviour, or a Riot, or the like) the party must offer sureties to the justice of peace, or else the justice may commit him to prison; for the justice needeth not to demand suretie of him.

Also after that the party shall be brought before the justice, if before him he shall refuse to finde sureties, the officer without any new Warrant or commandement, may carry the party to prison, and that by the wordes of the first warrant, and if hee shall refuse thus to doe, that then, &c. See the forme of the warrant.

If the officer doe arrest the partie, and doe not carry him before some just. of peace to find sureties, &c. or upon the refusall of the partie, if the officer shall arrest him, and doe not carry him to the gaole, in both these cases the officer is punishable by the Justices of peace for this neglect, (by Indictment and fine at their Sessions:) and also the party arrested, may have his action of false imprisonment for the arrest: for where the officer doth not pursue the effect of his Warrant, his Warrant will not excuse him of that which he hath done: 21 H.7.23.a. See 3 H.7.fol.3. b. Brian & Br. faux imp. 21.

And if the party be imprisoned for default of sureties, and after he that demanded the peace against him happen to dye, or shall release the peace,

How it  
shall be  
executed.  
5 Ed. 4.  
13.  
Lam. 92.  
Yet some  
Præsi-  
dents are  
quod ca-  
piatis,  
&c.  
P.R. 20.  
& Crom.  
235. Br.  
F. imp.  
18.

14 H.7.  
Br. Peace  
7. &  
Mainp.  
39.

Co. 5. 50

5 Ed. 4. 6  
P.R. 20

it seemeth in these cases, the Iustice of peace may make his Liberate or warrant for the delivery of such prisoner; for after such death or release, there seemeth no cause to continue the other in prison. Also any Iustice of P. may upon the offer of such prisoner, take surety of him for the peace, &c. and may thereupon deliver him.

It seemeth (by some opinions) that if the party imprisoned for not finding sureties, hath a suit depending in the common place, he may by the course of that Court, by a Writ of Priviledge, be discharged of his imprisonment, if the other party be not ready in the Court at the day of the returne of the Writ, to pray the new sureties of the peace. But *quere*, for it may be he which demanded the peace, hath no notice of the removing of his body, and then how can he be ready in the Court of Common-Pleas at the day? and therefore it may seem a hard case so to be defeated of this surety.

If the party hath gotten sureties, then if the Warrant proceed *ex officio* (and not upon the Writ of *supplicavit*) and be a generall Warrant (*sc.* to come before me, or some other Iustice) the party may go before any other Iustice of P. to offer his surety; yet he shall not enforce the officer to travell to a Iustice out of the division or limit where they be dwelling, without good cause: Nay, it is at the election of the officer (who is the minister of Iustice) to carry the party Attached, to any other Iust. of P. that he will; for it is more reason to give this election to the officer (who in presumption of Law is a person indifferent, and is sworn to execute his office duely) than to give the election to the Delinquent himselfe, who by presumption will seek shifts, and to weary the officer; this hath been so adjudged.

If the other Iustice of peace (before whom the party so Attached shall come) shall refuse to accept and take such surety being offered to him, this is punishable in the Star-Chamber: for such Iustice of P. ought to take of him such surety, and to bind him by Recognisance: but yet that must be done in such sort, in all points, as the form of the former precept doth require: And thereupon the same other Iust. of P. (having so taken surety for the peace) may and ought upon request, to make his *superfedeas* by a *deus* to all officers, and to all other the Iust. of peace of the same County, and thereby the sayd party shall be discharged from finding other surety, and from any other Arrest for the same cause: But by such *superfedeas* that other Iustice cannot discharge the first Warrant of the first Iustice, untill the party be bonnd indeed; nor can give any other day to the party to appear at any other Sessions, &c.

Also a Iustice of Peace of the County, by a *superfedeas* cannot discharge



charge a warrant awarded by his fellow Justice, by force of a *Supplicavit* to him directed out of the Chancery, or Kings-Bench, to take the surety of peace of one resident in that County.

Also when a man doth fear, that surety of the peace will be demanded against him in the Country, or doth hear that such a warrant for the peace is already granted out against him, by a Justice of Peace; it seemeth in either of these cases, he may go and give surety of the peace before any other Justice of peace of the same County where he dwelleth, and thereupon may have a *supersedeas* from that Justice of peace, &c. But in such case it is fit that such party be urged by such Justice to put in sufficient sureties, and that he be bound towards the King and all his people, and to appear at the next Sessions.

If any Officer having a warrant from a Justice of P. to arrest a man to finde surety of the P. shall receive a *supersedeas* (out of the Chancery, or Kings-Bench, or from any Justice of the Kings-Bench; or from any Justice of P. of that County) to discharge the same surety of peace, and yet nevertheless will urge the party (by force of his warrant) to finde (new) surety for the peace, the party may refuse to give it; and if he be arrested or imprisoned for such refusall, he may have his action of false imprisonment against such officer: for such *Supersedeas* is a discharge of the former precept or warrant.

Lamb.  
101.

The forme of a *Supersedeas* granted by a Justice of Peace. See *postea* *vis. Warrants. Cap. 122.*

And this *Supersedeas* is sufficient, though it neither name the sureties, nor contain the summes wherein they are bound; but yet it is the better form to expresse them both. See 2 H. 7. 1.

Lamb. 99.

If the party shall mislike to be (or stand) bound to the peace, by the Justices of peace in the Country, then may he (either before, or after that he is bound in the Country) go; or send up to London, and there give surety for the P. (either in the Kings-Bench, or in the Chancery;) and thereupon the party may have a *supersedeas* (out of the Court, where he hath given such surety) to restrain the Justices of P. of the Country, from taking any surety of the peace of him: and then the Justices of peace of the Country, after the receipt of such *supersedeas*, must forbear to make any warrant for the peace against that party. And if any Justice of peace have granted out any such warrant against the said party, the said Justice must make his *Supersedeas* to the officers, thereby commanding them to surcease to put his former warrant in execution, and so to discharge it, and to discharge the party of an arrest, or imprisonment thereupon. See more *postea* *sub hoc titulo.*

Superse-  
deas from  
above.

Fitz. N.  
B 81. 2.  
& 238. 6.

The form of a *Superfedeas* for the Peace out of the Kings-Bench. See *lib. Intr.* 454.

The form of a *Superfedeas* for the peace out of the Chancery. See *Fitz.* 238. c. & *Register* 89.

Note, that this *Superfedeas* out of the Chancery, may be procured at any time in the Vacation, and out of Terme. *Fitz.* *Nat. Br.* 236. a.

Lamb.  
102.

If the Justices of Peace shall not surcease, after a *Superfedeas* (out of the Chancery, or Kings-Bench) to them delivered, an Attachment will lye against him or them for such contempt, and besides they may be fined and imprisoned for it.

Yea such a *Superfedeas* coming out of those high Courts, to the Justices of Peace, they ought thereupon to surcease, although such a *Superfedeas* should be awarded against Law.

If such *Superfedeas* shall be directed to the Justices of Peace, and Sheriffe; that Justice to whose hands it shall be delivered, may keep it, and may deliver that labell to the party.

And in these and the like cases, the Justice of peace shall do well to send to the next generall Sessions of the peace, as well the said *Superfedeas* (if it come to his hands) as also the Recognisance which he had formerly taken of the party (if he hath taken any;) for peradventure the Recognisance was forfeited before the *Superfedeas* was purchased; or if it were not forfeited, yet the consor is not indamaged thereby.

Lamb.  
115. 116  
Crom.  
139.

If the party shall procure such a *Superfedeas* (out of the Chancery or Kings-Bench) after that he is bound (by Recognisance) before the Just of peace, to keep the peace, &c. and to appear at the next Sessions, *quare* whether the party sending (by his servant) such *Superfedeas* to the Justices of P. at the next Sessions, be thereby discharged of his appearance there, the Recognisance also being certified thither by the Justice.

It seemeth to some, this difference is to be holden therein, *sc.* if the party were bound (before the Justice of Peace) to keep the peace against all men, &c. and shall after procure such a *Superfedeas*, testifying that he hath found surety in the Chancery, &c. against all men for ever, and shall send this to the Sessions, this shall discharge his appearance at the Sessions: otherwise if the *Superfedeas* shall testifie that he hath found surety, but till a certain day (which is after the next Sessions.) But yet it seemeth safest in both cases, for the party to appear to save his Recognisance. See to the like purpose the case in 28 H.8. *Dyer.* f. 25. where a man being arrested by the Sheriffe upon a *Capias*, found sureties for his appearance at the day, and there came a *Superfedeas* to the Sheriffe, and it was moved whether it were necessary for the Defendant to appear, or not,

28. H.8.  
Dyer 25.  
Crom.  
140.

not, to save his bond; or that this appearance, and surety were discharged by the *Superfedeas*: and the opinion of the Court was, That he ought to appear for the saving of his bond. Also the Presidents or Entries are, that the party bound did shew his *Superfedeas* in Court, and prayed allowance thereof, and was thereupon discharged.

Lib. in-  
ter. 453a

But for that divers contentious persons (deservedly fearing to be bound to the peace or good behaviour, by the Justices of Peace in the Countrey) do oftentimes procure themselves to be bound to the Peace or good behaviour, in the Chancery, or Kings-Bench, upon insufficient sureties, or upon colourable prosecution of some person, who will be ready at all times to release them at their own pleasure; whereupon his Majesties Writ of *Superfedeas* is often directed to the Justices of peace, &c. requiring them to forbear to arrest or imprison the parties for the causes afore sayd; by means whereof the sayd contentious persons do greatly disturb their neighbours, and affront the Justices of peace, to the evill example of others: therefore it is enacted by the Statute made 21. Jac. cap. 8. That all Writs of *Superfedeas*, to be granted by or out of either of the sayd Courts of Chancery, or Kings-Bench, shall be voyd; unlesse such Processe be granted upon motion in open Court, and upon such sufficient sureties as shall appear unto the Court, upon oath to be assessed at 5. li. lands, or 10. li. in goods, in the Subsidie book at least, &c. And unlesse it shall also appear first unto the sayd Court, that the Processe of peace or good behaviour is prosecuted against him or them, desiring such *Superfedeas*, *Bona fide*, by some party grieved in that Court, out of which such *Superfedeas* is desired to be so awarded and directed.

21. Jac.  
cap. 8.

*Si garrant pro pace soit grant vers un que ne Ossa appear all Sessions pur feare de auter arrest, &c. son remedy poit estre in deux manners, sc.*

1. *Devant que soit lye per le Justic. de Peace en pais, il poit doner Suretie pur le peace, in le Chancerie, ou in Banco Regis, & dilonques avera Superfedeas, ut supra. Et donque il ne serra lye per les Justic. de peace.*

2. *Après que est lye per les Justic. de peace in pais, semble n'ad auter reme-  
die, mes daver Cerciorari (hors del Chancery, ou Banco Regis) de remover la  
le Recognisance, prise per le Justic. de peace, &c. hic cap. 71.*

Now concerning the Recognisance for the peace. CHAP. 70.

**T**His Recognisance which the Justice of Peace taketh for the keeping of the Peace, is rather of congruence, than by any expresse authority given them. *Fitz. 82. a. 7. H. 4. 34. accord.*

Recogni-  
sans.

And this Recognisance for the peace, if the Justice of peace doth take



it by force of the writ of *Supplicavit*, then he ought to execute it, and to do in all things as the Writ directeth him. But where such Writ prescribeth not the summe, &c. or such like, that resteth in his owne discretion.

**Lam. 103** But if he take the Recognisance *ex officio*, and by force of the Commission, (and so as a Judge, not as a minister) then it resteth in the discretion of the same Justice of P. wholly to appoint and allow the number of sureties, their sufficiency in goods or lands, the summe of money wherein they shall be bound, and to limit the time how long the party shall be bound, and such other circumstances.

**H. 4.** In the Booke 7. *Hen. 4. fol. 34. a.* you shall finde the principall to be bound in 1000.li. and four sureties; every of them in one thousand marks before Justices of peace, and for the keeping of the peace.

**Br. imp. 18.** *Quere*, If a Justice of peace may not examine upon their oaths the sureties concerning their sufficiency: It seemeth to be the usage in the Courts at Westminster, and M. *Crompton* saith, that the Justices of peace in their Sessions may do it. *Crompt. 194. See hic cap. 114.*

The most usuall manner and safest way for the Justice of P. is, to take two sureties at the least (and those Subsidy men) besides the party himself, and to binde them by Recognisance to the King, *viz. Domino Regi*: And it must alwayes be for the keeping of the peace.

**Lamb. 204.** And yet by the opinion of master *Marrow* (who was in the time of K. *H. 7.*) a Justice of peace might have taken this surety by a gage pawned only to him.

Also (by his opinion) a Just. of peace might have taken this surety by an obligation made to himself, in the name of Justice of peace.

Yet if a Justice of P. had enjoyned a man upon pain of 20. li. to keep the peace, this had been nothing worth. But in this and the former two cases, and the like, this one generall ground or reason may be given for all, *sc.* that a man cannot be bound to the King, but only by matter of Record; and therefore such surety taken by gage or obligation, or such enjoining of the peace, seemeth nothing worth to binde the party.

**Fitz. N. Br. S. l. d.**

**The form. P. Accomp- patus 1.**

Besides, by the Stat. 33. *H. 8. c. 39.* there is a plain law made (in these and the like cases) which willeth, that all obligations, &c. which shall be taken in any wise for the King, shall be made in the Kings name, and by these words, *Domino Regi*: And if any person shall make, or take any Obligation (or Recognisance) to the Kings use in any other manner, he is punishable by imprisonment at the Kings pleasure, &c.

**Mar. 1c. 6.** A Justice of P. may take a Recognisance, and thereby may bind the party to keep the peace for one year, or for a longer time (by his discretion)

year

yea he may binde the party during his life upon reasonable cause; and this the Just. may do, either by his own absolute authority, or upon complaint to him made; and upon good cause shewed; as, if the offender be a common Barrettor, a Riotter, or else in the Justices conscience a dangerous person: but if such surety be so taking during the offenders life, the Just. of peace can never release that afterwards: and therefore the Just. must be well advised how he granted such surety.

If the Recognisance be made to keep the peace (generally) without any time or day limited, it shall be construed to be during the parties life. *Lambert. 113.*

A Iustice of P: intending to take a Recog, for the P. and yet maketh no mention therein (nor in the condition therof) that it is for the preservation of the P. it seemeth to be voyd, as being taken *coram non iudice*: for a Iustice of peace hath no authority to take a Recoga. generally, but for matters concerning his office specially. *Lamb. 105.*

If the Recognisance be, that the party bound shall not beat, nor maim *A.* yet it is not good, because it ought to be for the keeping of the peace (generally,) and the peace may be broken by burning the house of *A.* or the like. *Lamb. 105.*

If the Recognisance do not limit any time of appearance for the Co-tuzor, but be generally to keep the peace, yet it is good, for the time of appearance is referred to the discretion of the Iustice, and the chief scope is, the keeping of the peace. *Marrow. Ibidem.*

Also (by his opinion) if the Recognisance do limit a time of appearance, but therein is no person named, before whom the party so bound shall appear; then may he appear (in any place out of the Sessions, where he will) before that Iustice of peace which took the Recognisance. *Ibidem.*

But in the two last cases, if a Recognisance should be taken in such manner at this day, I should think it safe for the party to appear at the next Sessions for the peace, and there to Record his appearance: See more *postea sub hoc titul.*

If the Recogn. be to appear before the Iustice of P. within forty dayes next after the date, or taking of the Recognisance, and before the end of the 40 dayes a generall Sessions of the P. shall be holden, &c. the party now ought to appear at the same Sessions. *Crompt. 123.* See the like matter. *Br. Condition 208.*

Also if these words be in the Recognisance, *sc.* that he shall appeare before the same Iustice, & *sociis suis*, then must he appear at the next Sessions.

Crom.

141.

If the Recognisance bee to appeare at any other Sessions after (and not at the next Sessions) yet the Recognisance is good: And yet by the statute 3. H. 7. cap. 1. it is now enacted, That every Recognisance taken for the peace, by the Justice of P. and *ex officio*, shall be certified (*sc.* sent or brought in) at the next Sessions of the peace, and there delivered to the *Custos Rotulorum*, that the party so bound may be there called; whereby it may seem that every recognisance taken from the P. now, ought to be, to appear at the next Sessions.

P. Just.

125

L3. 107.

If the Recognisance bee in twenty pound to bee leavied of his lands onely, or of his goods onely, yet it is good; and these words [onely] may seeme void: for the acknowledgement of the Recognisance (before a competent Judge) both maketh it a debt, and implieth the ordinarie means of Law to come unto it. See hereof *postea tit. Recognisance, cap. 123.*

Fitz. N.

Bz. 80. g

Crom.

141.

If the Recognis. be to keepe the peace towards the King, and all his people, but not towards any person certain, yet it seemeth good.

So if the recognisance be to keep the p. towards A. onely, it seemeth good; or to keep the peace towards A. and his servants, without being bound toward the King, and all his subjects; it seemeth good.

But the best forme is to bind the party, to keepe the P. towards the King and all his people; for first, the words of the Commission are to find surety, *Erga nos & populum nostrum*; and againe the common usage is so: and besides it may otherwise prove dangerous to the party who hath cause to crave this surety of the peace; for the other party who shall give mee just cause to crave this surety against him (because he will not be bound to the peace towards mee) he will perhaps pray to bind himselfe to the peace to A. who is his companion, and then if the Justice of peace shall so bind him, then may he and A. go before another Justice of P. (and that peradventure within one week) & there A. may releale him of the peace; and so (I trusting that he is still bound) may be after beaten, maymed, or slain by him, or by his procurement.

So then though the recognisance being taken in any manner or sort aforesaid, may prove sufficient to bind the party to the King; yet peradventure it will not excuse the justice of P. from blame; and therefore it is safest for the justice of P. to follow the received forme.

The forme of the recognisance for the peace, see *postea tit. Recognisance, cap. 123.*

The recognisance for the peace being thus taken; if it were by vertue of the Writ of *Supplicavit*, the justice ought to return the Writ, and to certifie (under his seal) his doing therein into the court from whence the



The *Supplicavit* proceeded; and he may also send such Recognisance (so taken by him) with this Certificate; or else he may keep the Recognisance in his hands still, untill he shall receive a *Certiorari* out of the Chancery, directed to him for removing of this Recognisance. See more *sub hoc tit. postea.*

But if this Recognisance for the peace were taken by the Justice of P. <sup>3 H. 7. ca. 1. P. Inst. 106</sup> *ex officio*, then the Justice of P. ought to certifie (send or bring) the Recognisance to the next Sessions of the peace, so that the party bound may be called thereupon; and that if the party make default of appearance, the same default may be then and there Recorded. See 2 H. 7. fol. 1.

If a man do forfeit his Recognisance (either for default of appearance, or for breach of the peace) the Justices of P. may not award any processe for the forfeiture thereof; but must certifie the Recognisance, with the cause of the forfeiture, into some one of the Kings Courts at Westminster.

And not that the said Recognisance it selfe, with the Record of such default of appearance, or other forfeiture, shall be sent and certified into the Chancery, Kings-Bench, or Exchequer, that from thence processe may go out against the party: and so ought it to be, if it be presented by the Jury or great Enquest, that the party hath forfeited his Recognisance by breach of the peace. *Lamb. 570.* <sup>Lam. 506 3 H. 7. cap. 50. Recogn. forf.</sup>

If the Justice of peace shall not certifie such Recognisance (taken for the keeping of the peace) at the next Sessions, the said Stat. 3 H. 7. cap. 1. limiteth no penalty, and yet see *Brooke tit. Peace 11.* That the Justice shall forfeit 10. li. if he do not certifie the Recognisance of the peace at the next Sessions: but M. *Brooke* there mentioneth the Statute 3 H. 7. cap. 3. which Statute of 3 H. 7. cap. 3. was onely for baylment of prisoners, and certifying the same, and so seemeth to mistake the Statute. *Vide Fitz. 251. f.*

If he which demanded the peace shall release the peace, before the said next Sessions, then it may seem though the Justice of peace shall not certifie the Recognisance, that the Statute is not transgressed or offended; for it hath been holden, that the party shall not be called in such case upon his Recognisance: *tamen quare inde, & vide hic postea Cap. 71.* but howsoever, it is better to certifie the Recognisance, for peradventure it was forfeited before the release made. <sup>169</sup>

Also he that demanded this surety, may by a *Certiorari* remove such Recognisance into the Chancery, before the Justice hath certified the same to the Sessions, and so in case the Justice shall not certifie the same thither. *Fitz. 81. c.* See here *postea. cap. 73.* the forme of the Justices returne of such *Certiorari*, and of the Recognisance. <sup>2 H. 7. c. 1. Re. Peace. 11. Fitz. N. B. 81. Recogn. fines removed.</sup>

If the Justice of peace were deceiv'd in the sufficiency of the sureties, the same Justice of peace, or any other Justice of P. may afterwards compel the party to find & put in other more sufficient sureties, & may take a new Recognisance for the same; for that the precept is, *Ad inveniendum sufficientem securitatem*. But if the sureties dye, the party principall shall not be compelled to find new sureties. See more *postea sub hoc tit. & postea tit. Bailement. cap. 114.*

*What thing shall discharge this Recognisance (of the peace,) or the party of his appearance at the Sessions.* CHAP. VII.

**V**Hether a *Superfedeas* out of the Chancery, &c. shall discharge the party of his appearance. See *antea sub hoc tit. cap. 69.*

3Q. H. 6.  
26. Br.  
Surety  
10. &  
Def. 60.

He which is bound to the peace, and to appeare at a certaine day, he must appeare at that day, and record his appearance, although hee who crayed the peace cometh not in to desire that it may be continued, otherwise the Recognisance shall be forfeited.

And if a man bee bound to keepe the peace towards the King and all his people, but not towards any person certain, and to appear at such a Sessions, the Court at that Sessions may make Proclamation, that if any man can shew cause why the peace granted against such a one shall bee continued, that hee speake, &c. And if no person cometh to demand the P. against him, or to shew cause why it should be continued, then the court may discharge him. But if a man be bound as aforesaid, and especially to keepe the peace towards *A.* there though *A.* cometh not in to desire that the peace may bee continued, yet the court by their discretion shall doe well to binde him over till the next Sessions; and that may be, to keepe the peace against *A.* onely if they shall thinke good: for it may be that *A.* who first crayed the P. is sicke, or otherwise letted, so as he cannot come to that Sessions, to demand the continuance of the peace further: and in some places in such case, they ordinarily use to bind him over for two or three Sessions together, by order amongst themselves.

Lam. 112

And yet by the course of the common place, one that was imprisoned for the peace (being removed thither by a Writ of priviledge) was there discharged, for that he which demanded the peace came not at the day (of the returne of the Writ) to pray continuance thereof. See more *antea sub hoc tit. cap. 69.*

2. H. 7. 4.  
Br. Surety  
131

If the Justice of peace shall not certifie the Recognisance to the Sessions, yet the party ought to appear, and to Record his appearance. See such a matter of a Sheriff, who tooke bond of one to appeare in the common

Common bank, at a certain day, &c. although the Sheriff return not his Writ, &c. yet the party must appear to save his bond. *Vide* 18 E. 4. 18. for this last case.

If the party that is bound to appear, be so sick that he cannot appear, nor by any means travell at the day, yet it seemeth his Recognisance in strictnesse of law is forfeit, and so it is by the course of the Courts at West. *ut dicitur*; yet in this case upon due proof of such his sicknesse, I have known the Justices of P. (in their discretion) have forbore to certifie or Record such forfeiture or default: And that they have taken sureties for the peace of some friends of his present in court, untill the next Sessions; for that the principall intent of the Recognisance was but the preservation of the peace. But *quare* how this is warrantable by their oath; Besides, the party so bound might (by a *Certiorari*) have removed his Recognisance into the Chancery, or Kings Bench, before the day of his appearance, and then he should not have needed to appear at the Sessions, for that the Justices there should have no Record whereupon to call him.

But the Civill Law in such cases is more favourable: for with them the rule is, *Citatus ad locum non tutum, non ardetur comparere*: as if the plague shall be hot in the place, or town where the party is to appear, or where their court is held, this is good excuse in their law, *ut dicitur*.

So if there shall be any other inevitable accident, whereby the party shall be hindred, as by any great snow, inundation of waters, or by any fall, or other hurt, or sicknesse, whereby the party is in danger of death; in these and the like cases the Civill Law doth dispence with defaults, referring these things, *arbitrio Judicis*.

See M. Book tit. *Saver default*. 17. 28. 45. & 48.

If the husband be bound that he and his wife shall appear at such a Sessions, and that they shall keep the peace in the mean time, &c. and at the day the husband doth appear, but not his wife; here M. *Crompt.* saith the Recognisance is not forfeit; for if there shall be cause to continue this surety of the peace against the husband and wife still, the husband shall be bound, and not the wife, and therefore the wives appearance seemeth not greatly materiall, *tamen quare*, & *Vide Fitz. Forfeiture* 17. 8 E. 2.

If a man be bound to the peace during his life, or generally, without any time or day limited, in such case, neither the King, the Ju. of peace, nor the party, can discharge his Recognisance, during the life of the party so bound; by release, or otherwise. *Br. Peace* 17.

Also it hath been holden, that the Justice of P. who upon his own discretion

Crompt.  
143.Crompt.  
144.Release.  
21 E. 4.  
40.  
Lam. 133.



discretion hath compelled one to finde surety of the peace untill a certain day, and hath taken Recognisance for his appearing, &c. may upon the like discretion release the same before that day; and that such a release will discharge the Recognisance taken by that Justice, if it were not forfeited before, and will also discharge the party so bound, of his appearance: for that here all this businesse depends onely upon the discretion of the Justice of peace who bound him. See *Fitz. Inst. de P. fo. 9. Lamb. 113. & Cromp. 139.*

Again, it hath been holden, if a Justice of P. shall grant the peace at the request of another (*sc.* at the suit of *A.*) and the Recognisance bee taken to keep the peace against *A.* onely, then (before the next Sessions) may *A.* onely release it (and none other:) And that release being certified at the next quarter Sessions, will discharge the party so bound, of his appearance, so as he shall not be called upon his recognisance; for that release being so certified, is now become of record aswell as the recognisance.

*Br. Peace* If the Recognisance were to keep the peace *versus cunctum populum*  
*17: populum & precipue versus A.* yet may the same *A.* release it: for although this may seem popular, and that all others should have interest therein as well as *A.* yet as it appeareth by the word *precipue*, it was especially taken for his safety: but the contrary was holden by all the Justices, 21. *F. 4. 48. sc.* that the party at whose suit the same was granted, cannot release the same. And *M. Lam.* alloweth best of that opinion: nevertheless the usage now is, and long hath been, as is aforesaid, as appeareth by *M. Brooke tit. Peace. 17.*

But (in these former cases) although this surety of the peace be released, and the parties agreed, yet the Recognisance shall not be cancelled by the Justice of peace; for peradventure the Recognisance was forfeited before such release made: And therefore the Justice of peace shall do best, nay ought to certify such Recognisance, with the release, together, the next quarter Sessions.

The forme of the Release of the Justice of peace. See *postea tit. Release cap. 128.*

The forme of the Release of the party. See *ibid.*

Note, it hath been holden that the party that first demanded the peace, might release the same before the same Justice of peace that took the recognisance, or before any other Justice of peace.

Note also, that to release such surety of the peace, by deed under his hand and seal, is nothing worth.

But yet it is now holden, that neither the Justice of peace, nor the party, can discharge the Recognisance of the peace by their release out of the Sessions;

Sessions: for first the Recognisance is made to the King, and therefore none but the King can release or discharge the same. Secondly, the Recognisance is taken for the appearance of the party, &c. (as well as for his keeping of the peace) and the release of the Justice, or of the party, cannot discharge the appearance of the party bound. And therefore notwithstanding that the Just. of Peace out of Sessions shall make or take any release of the peace, yet it shall be safe for the party bound to appear for the safeguard of his Recognisance; And upon the certificate made by the Justice of peace to the Sessions of such release, the comor shall be there discharged, (at least) against the party who first craved the peace.

And in truth the appearance of the party bound seemeth requisite notwithstanding any release made; first for the safeguard of his Recognisance as aforesaid; secondly, that others may object against him in the open Sessions) if he hath in any sort broken the peace, so as he may be therein indicted upon the same, &c.

Note also, the King can in no case release or pardon the surety of the peace, nor such Recognisance (taken in the behalf of any of his subjects) untill it be forfeited, for the mischief that may come to the party thereby, but being forfeited, the King and none other may release and pardon the forfeiture.

But the death (or resignation) of the King dischargeth this surety of the peace, taken by his subject: for the Recognisance is to keep the P. of the King (then being) and when he is dead, &c. it is not his peace. *Br.*

*Death.*  
1 H. 7. 1.  
Br. Peace  
15.  
Br. Cor.  
21.  
Lam. 116

*Surety 20.*  
Also the death of the Recognisor, (sc. of the party principall that is bound) dischargeth this surety of the peace, and the Recognisance. See 21 E. 4. 70. & 15 H. 7. 2. & 13.

Also the death of the party, at whose suit the peace was taken, dischargeth the Recognisance, if it were to keep the peace against him alone. *Lam. 116*

But yet in these three former cases, such death shall not discharge the Recognisance, if it were forfeited before: and therefore it shall be best for the Justice of peace to send to the next Sessions, such Recognisance (notwithstanding such death) else the King may be defrauded of a forfeiture, if any were before.

The death of the sureties, shall not discharge the recognisance, neither shall the party principall be compelled to finde new sureties after their death; for if the peace be broken after their deaths, their executors shall be charged therewith; and so there is no mischief by their deaths: yet *alii è contra ibidem*, sc. that the principall shall be compelled to finde new sureties.

21 E. 4.  
40. Br.  
Peace 17

21. E. 4.  
40. 10. H.  
7. 11.  
Er. Re.  
co. 21.

If the King and the recognisor be at issue upon the breach of the peace, and the King waves the issue, yet is not this Recognisance discharged, but remaineth in force, and may be sued againe upon a new breach of the peace afterwards.

*What act shall be (or makes) a forfeiture of the Recognisance taken for the Peace. CHAP. 72.*

Lamb.

117

**V**hatsoever act is a breach of the P. the doing, threatning (or intending) thereof, against the person of another being present, is a forfeiture of this recognisance.

18. E. 4.

28. Br.

peace. 16.

And therefore first this breach of the peace may be committed by using any fearfull or threatning speeches to the person of another: therefore all menacing or threatning to kill, or beat another to his face, is a forfeiture of this recognisance; otherwise if the party so threatned, be absent. And yet if the party so bound, shall threaten to kill or beat *A.* who is absent, and after shall lye in wait for him to kill, or beat him, this is a forfeiture of his recognisance, without any threatning, assault, or affray to the person. 22. E. 4. 35. *Crompt.* 135.

So assaults, *i. e.* to strike at, or offer to strike at a man, although he never hurt, or hit him, this is an assault, 22. *Aff. Pl.* 60. And is a forfeiture of this recognisance: see *Crompt.* 137. *b.* & 40. E. 3. fol. 40.

Much more all affraies, or violent and malicious batteries, strikings, beatings, woundings, or other mis-intreatings of the person of another, are forfeitures of this recognisance.

The difference of these three, are, menacing beginneth the breach of the peace, assaulting increaseth it; and battery accomplisheth it.

Or thus: Battery is the wrongfull beating of another. *Fi.*

Assault, is when one unlawfully sets upon the person of another, offering to beat him, although he beats him not, or striking at him, though he strikes him not. *ibidem.*

Hither also belongeth lying in waite, besetting his mansion house, and not suffering his servants to go in and out, &c. *Fi.*

Menaces, are threatning words, to beat another, or the like, for fear whereof he dares not go about his businesse. *ibid.*

For breaches of the peace without word, or blow given, as to go with Weapons, or company unusually; which be in *effray del pais*, see page seq.

If he that is bound do but command or procure another to breake the peace, and that it be done indeed, this is a forfeiture of this recognisance.

*See page 20.*



All false imprisonment, or arresting of another, without warrant, is a forfeiture of this Recognisance. Now false imprisonment is any unlawfull restraint of Liberty. *Fi.* Lamb. 130.

So to thrust another into the water, whereby he is in danger of drowning, is a forfeiture of this Recognisance.

So to ravish a woman against her will.

So to commit burglary, robbery, murder, or manslaughter (all which are to the person of another) or to procure the same; all and every of these are forfeitures of this Recognisance.

So to do any treason against the person of the King, this is a breach of the peace, and a forfeiture of this Recognisance: for although the words of the Recognisance usually be, *Quod gerit pacem erga cunctum populum Domini Regis, & præcipue erga A.B.* (and is not *erga ipsam Dominum Regem, & cunctum populum, &c.*) yet because this fact is done against the head of the body of the whole Realm, it is to be adjudged a prejudice and hurt, *ad cunctum populum*, and a breach of the peace in the highest degree.

But note that the act which must make a forfeiture of a Recognisance for the P. must be done or intended to the person of another; (by the opinion of M. Marrow.) And the book of 2 H. 7. importeth as much, saying that this surety of the peace is not broken without an affray, fighting, beating, or the like. Mar. l. c. 7. 2 H. 7. 21.

And yet to be riotously assembled, is a breach of the peace, and a forfeiture of this Recognisance, for that it is in *terrorem populi*. Nay if two Just. of peace shall record a Riot upon their view (against a man so bound to the peace) although it were no Riot, &c. yet he cannot plead not guilty in a *Scire facias* upon his Recognisance. Marr. Lamb. 311.

Also to wear armour, or weapons not usually worn, or to go with an unusuall number of attendants, seem also to be a breach, or means of breach of the peace, and a forfeiture of this Recognisance for the peace, for they strike a fear and terror in the people, and be in *effray del pais*. See *Br. Surety* 12. & *hic cap.* 74.

He that is bound to the peace ought to carry himself well in his behaviour and company. See *antea sub hoc tit. Et postea tit. Surety for the good behaviour.*

Yet the having of weapons, or company unusuall, are in some cases allowed, and lawfull, and are no breach of the peace. See hereof *postea tit. Posse Comitatus, & postea tit. Riots.*

Also though assaults and batteries be for the most part contrary to the peace of the Realm, and the Laws of the same, yet some are allowed to Barr. 11.

have a naturall, and some a civill power (or authority) ouer others; so that they may (in reasonable and moderate manner onely) correct and chastise them for their offences, without any imputation of breach of the peace; yea they may (by the law) justifie the same; and so in such cases the beating or battery of the person of another, maketh no breach of the peace; but the manner of the battery onely doth make the breach of the peace.

And therefore the parent (with moderation) may chastise his childe within age.

So may the master his servant, or apprentice, for their evill service.

So may the schoole-master his schollers.

So may Gaoler (or his servant by his commandment) his unruly prisoners.

Plow. 18. So may any man his kinsman that is mad, &c. And none of these shall be in perill therefore to forfeit any recognisance of the peace.

P. Fighting. 2. Note that the master may strike his servant with his hand, fist, small stasse, or stick, for correction; and though he do draw bloud thereby, yet it seemeth no breach of peace, as appeareth by the statute of 33. H. 8. cap. 12.

And where the servant shall be negligent in his service, or shall refuse to do his work, &c. there the master may chastise his servant for such negligence or refusal; so as he doth it not outrageously.

38. H. 6. But if the servant shall depart out of his masters service, and the master happen after to lay hold of him, yet the master in this case may not beat or forcibly compell his said servant against his will to returne, or tarry with him, or do his service; but either he must complain to the Justices of Peace for his servants departure; or he may have an action against his servant, if being required to do his service he shall refuse it. See *antea* tit. *Labourers*.

38. H. 6. And as the master without the breach of the peace, cannot by beating or force, compell his servant to serve him against his will: no more can a Lord, or Guardian in Chivalry, compell his Ward, by beating, or by force to come unto him, or to tarry with him against his will.

21. Ed. 4. Also the schoole-master, with a rod, may chastise his scholler which is  
6. Lib. carelesse and negligent in learning, or that shall abuse his schoole-fellows,  
Intr. 613 or for other the like occasions.

21. Ed. 4. Also it is lawfull for the parents, kinsmen, or other friends of a man that  
45. 23. is mad, or franke (who being at liberty attempteth to burne an house, or  
astip. 36. to do some other mischief, or to hurt himself, or others) to take and put him into an house, to binde or chain him, and to beat him with rods, and to do any other forcible act to reclaim him, or to keep him so as he should do no hurt. *Br. F. imp. 35.*

Also.

Also if a Constable, Sergeant, Bailiffe, or other officer of Justice, or any other being of their company, for the better executing of their office, shall be forced to strike any person that will not yeeld to their arrest, or that shall resist, or flie from their arrest; they shall not be in any danger to forfeit any Recognisance of the peace by any such assault, or striking, but may well justifie such act.

Also it is no breach of the peace, for any private man to beate, strike, or wound another, in defense and safeguard of his own person, from killing, wounding, or beatings, but is a thing justifiable. And in an action of trespassse *de Assault et Battery*, the Def. may plead, *Defon Assault demesme. sc. quæ illi fait. cro. in defence luy mesme, encontre le assault del playniffe &c.* And yet by others, if another shall assault me; if I may escape with my life, or without being wounded, maimed, or hurt, it is not lawfull for me to beate or wound the other, who first made the assault; but I must first flie, or go from him so far as I can. 25. E. 3. 42. 2. H. 4. 8. 33. H. 6. 18. Br. Tr. 1. 28. 71. Cro. 137. hic cap. 78.

*Sed vim vi repellere licet, modo fiat moderamine inculpatæ tutelæ.  
Non ad sumendam vindictam, sed ad propulsandam injuriam. Co. L. 162.*

By the Civill law he shall not be said to have done a wrong, who incontinently for his safeguard, after the same manner whereby he is assaulted, doth defend himselfe; as when a man is assaulted by weapons, he may resist with weapons: but if he do exceed measure in repelling an injury, as if being wronged in words, he shall resist with weapons, and by such resistance do beate or wound the other party, he which is so beaten or grieved may have his action, and shall recover dammages, &c.

And to prescribe some temper and moderation in the resisting of verbal or actuall injuries, one hath these verses:

*Res dare pro rebus, pro verbis verba solemus.*

*Pro busis, busas, pro trufis reddere trufas.*

Things must be recompenc'd with things, buffets with blowes,

And words with words, and taunts with mocks and mowes.

If two or more do agree together to play at Barriers, Back-sword, Bucklers, Foot-ball, or such like, and one of them doth wound or hurt another, the party hurt shall not have an Action of trespassse therefore against the other; for that it was by consent, and to try their valour; and not to break the peace. Fitz. Barr. 244.

Yet if such a man were before bound to the peace, such act seemeth to Lamb. be a forfeiture of his Recognisance. See Br. Cor. 229. for although such sports be suffered, yet they are not lawfull.

Also



In Defence  
of others.

Also it is no breach of the peace, for a man to beat him that doth assault and would beat, wound, or evill intreat his wife, father, mother, or master, but is justifiable.

So if the wife shall beat him that shall assault, and would beat or evill intreat her husband.

So if the father or mother shall beat him that doth assault, and would beat or evill intreat their child, being then within age, and not able to defend it selfe.

But though the servant may lawfully beat him that doth assault and would beat, or evill intreat his Master, or Miltresse: yet the servant cannot justifie the beating of another in defence of the father, mother, brother, sister, son, or daughter of his master or mistresse, for he oweth no obedience or duty to any of them. See *Fitz. Barr.* 73. & 102.

P. R. 5.  
R. Insti-  
lic. 3.

By some opinions the Master cannot justifie the beating of him that doth assault, and would beat his servant: but the master with a sword, staffe, or other weapon may defend his servant assaulted, from being beaten, in respect of the losse of his service. Yet M. *Lambert* and M. *Crompton* are of opinion that the master may beat another in defence of his servant; but *9. E. 4. Fitz. Barr.* 102. *contra.*

Lam. 132  
Crompt.  
136.

Neither can the Fermour or tenant justifie such an act in defence of his Land-lord; nor a Citizen, &c. in defence of the Major (or Bayliff) of the City, or town corporate where he dwelleth.

And yet where the life of any person is in danger by beating of another there any stranger may lawfully resist it, and that with force, and beating of him which offreth such violence. *Vide* 12. H. 8. 2. b. *hic cap.* 78.

In defence  
of my goods

9. E. 4.  
28. 19. H.  
6. 31. 56.  
Lib. Int.  
611.

Also the Law doth tollerate a man to beat another for the preservation of his goods: And therefore he that shall attempt by force and violence to take away my goods wrongfully from me, whether they be goods whereof I have a lawfull property, or such goods whereof I have only a possession by the bailment of another; I may justifie to defend the same by force, and if I shall hurt or beat such person, it is no breach of my Recognisance for the peace, yet if I shall wound him by such beating, that is not justifiable; but if I kill him, it is felony; and in both these last cases it is a breach of the recognisance. See *hic cap.* 78.

If another man will take away my goods, I must first lay my hands upon him and disturb him, and if he will not leave, then I may beat him rather than he shall have or take away my goods. *Fi.*

10. E. 4. 6.  
3. H. 4. 9.  
11. H. 6.

The same law is in every case where another shall attempt by force to take away or to put me out of possession of my Land, Freehold, Copyhold, or Lease; or to stop or turne my lawfull High-way, or my ancient river

river, or water-course leading to my Mill; in these and the like cases if I shall disturb him therein, whereupon he doth assault and attempt to beat me, I may justifie to beat him again, as well in defence of my person, as of my possessions, but not to kill him.

The same Law is also in every case, where an offender is by order of law punished with whipping, stocks, pillory, or otherwise, for any offence by him committed contrary to the lawes or statutes of the realm, there is no peace broken, nor any recog. of the peace forfeited by him or them which shall lawfully execute any such punishments. In execution of justice.

None further, that there are divers things which may be done against the peace, and divers offences, for which an Endicement *contra pacem* will lie, and yet the committing or doing of such offence or act, shall be no forfeiture of the recognisance for the peace; for that the act that shall breed a forfeiture of such a recognisance, must be done or intended unto the person as aforesaid, or *in terrorem populi*. Lam. 132

Therefore to enter into lands, where he ought to bring his Action or to disseise another of his lands.

Or to enter into lands or tenements with force, being without offer of violence to any mans person, and without publick terror. *Crompt. 136.* Mar. 1st

Or to do a trespass in another mans corn or grass.

Or to take away another mans Ward :

Or to take away another mans goods wrongfully, so it bee not from his person.

Or to steal another mans horse, or other goods feloniously, being not from his person. Ibid.

All these, and the like be breaches of the peace, and yet these will make no breach of this recognisance; nor breach of the peace within the meaning of the commission of the peace.

Note, that if a man be bound in such a recognisance for himself and his servants, if any one of them breake the peace, the whole recognisance is forfeited. *Et sic. in similibus.* 4. H. 7. 8.

Note also, that the sureties may plead, that the party principall hath not broken the P. although upon issue the same shall be found against the said principall; for they are estrangers thereto. *Fitz. Aurtment. 46.*

Now concerning the Writ of Supplicavit. CHAP. 73.

**T**he formes of this writ, out of the Chancery, are of divers sorts, as you may see; *Fitz. N. B. 80. d. & Register 89.*

By which formes of the writ, it appeareth, that it may be directed to the Justices of peace or to one of them; or to the Sheriff, or to every of them to cause

cause the party that is to be bound, to come before him or them, to finde surety of the peace. And this writ may be, that the principall shall be bound in such a sum, and the sureties in such a sum certain, (and that may be in what certain sums the demandant will:) or the sums may by the writ be referred to the Justice of peace, &c. with this clause therein contained, *pro qua respondere volueris*: and the said writ is further, that if the party shall refuse, &c., that they shall commit him to the gaol, *quousque*, &c. and that when they have taken such surety, they do certifie the Recognisance (which they have so taken) under their seals, and return the writ into the court from whence the same was awarded, and that without delay.

And for that this Writ is of divers forms, the Justice of peace must have a care that he do execute the same in every behalf, as the same writ shall direct and appoint him.

When the writ doth refer the sum (wherein the principall, and his sureties shall be bound) to the Justices, &c. then it resteth in their discretion; but yet it is then safe for them to take good sureties, and to bind them in good sums; and the rather when that clause is in the Writ, *pro qua respondere volueris*.

21 H. 7.  
20. Br.  
Peace 9.

When this writ is directed to the Sheriff, and to all the Justices of peace of that county, and is delivered to any one of them, he onely to whom it is, first delivered, ought to execute the same writ (in every behalf) *sc.* he onely shall make a warrant, &c. returnable before himself, and he onely shall take sureties, and make return thereof (onely) without any other.

The form of a warrant for the peace upon a *Supplicavit*: see *postea* *tit. Warrants*, cap. 121.

Also the same Just. of peace after such surety taken, may make the party a *Supersedeas* to discharge him from any other arrest; or to deliver him being in prison for the peace, (at any other mans suit, as it seemeth.)

Cramp. 237. b.

The form of such *Supersedeas*: see after, *tit. Presidents*, cap. 122.

21 H. 7.  
Br. Peace

The party who is attached upon this Writ of *Supplicavit*, cannot go to be bound before any other Justice of peace, but onely before him from whom the warrant proceeds upon this writ; neither can another Justice of peace (by a *Supersedeas*) discharge such a warrant made by his fellow Justice, by force of this Writ.

9 E. 4. 32  
F. ex. imp

The Justice or Sheriff to whom this Writ shall be delivered, may make a deputy herein; *sc.* may make his warrant to the Bailiff, Constable; or other person indifferent, to apprehend the body, or to cause the party to come before him (the said Just. or Sheriff) to find sureties, &c. And that if he shall refuse,



refuse, that then the Constable, &c. shall carry him to prison, there to remain untill he shall find sureties; and yet the writ of *Supplicavit* is to commit the party to the Gaole, if he shall refuse before the Justices (*Si coram vobis, vel te, recusaverit, &c.*) But the Just. or Sheriff cannot give their power to another, to take this surety; for that is a judiciall power, which cannot be assigned over; neither can they make any deputy therein, but they must take this surety themselves: and the Bailiffe or Constable who apprehended the body, cannot take this surety. *Br. Office 39. & fx. imp. 34.*

If the party shall make resistance upon the execution of this writ, the officer may take *posse comitatus*, *sc.* the help of his neighbours, to aid him to arrest such party: see *postea tit. posse comitatus*: or else the said Just. may make his warrant to the Sheriffe to apprehend the party, and upon resistance the Sheriffe may take *Posse Comitatus*, to arrest the party.

He that is to be bound to the peace by force of this Writ of *Supplicavit* F. N. B. 80. d. out of the Chancery, is to be bound against him only that sueth out the writ, as appeareth by the form of the Writ aforesaid.

But yet at this day it is used otherwise: and I once received out of the Chancery a speciall writ of *Supplicavit*, directed *Custodibus pacis, ac vic. & eorum cuilibet*, commanding us to take sureties of the party to be bound *quod ipse damnum vel malum aliquod alicui de populo nostro, & imprimis side Joh. &c.* (that sued out the Writ) *non fac, nec fieri procurabit, &c.*

Also by this Writ of *Supplicavit*, the party (against whom the Writ is sued forth) shall be bound to the peace for ever (if he be taken;) for the Writ containeth or mentioneth, not that he shall be bound to keep the peace untill any certain time; but generally (*ad sufficientem securitatem inveniend. sub pœna, &c.*) And therefore to prevent this, the party (before he be attached) may come into the Chancery, and there find sureties, and be bound untill a certain day, that he shall do no hurt, &c. unto the party that sued forth the *Supplicavit*; and thereupon he shall have a *Superfedeas* out of the Chancery, directed to the Justices of peace, and to the Sheriffe (or to one of them) commanding them to surcease to arrest the sayd party, or to compell him to finde any sureties, &c. And that if they have arrested or imprisoned him for this cause, and none other, that then they deliver him, &c. *Fitz. 18. a.* The form of the *Superfedeas*, See *Register. 89.*

And if the party against whom this Writ is sued forth, cannot travell, (or else will not travell) to binde himselfe in the Chancery, then he may cause some of his friends to be bound, or to find sureties in the Chancery for him, according to the *Supplicavit*, and thereupon they may purchase a *Superfed.* out for him, directed to the Justices of P. and to the Sheriff, and by

this *Superfedeas* the Justices and the Sheriffe shall be commanded to take also surety for the party himselfe in the countrey (according to the Writ of *Supplicavit*) that he shall keep the peace, &c.

Also if the party happen to be arrested, and imprisoned upon this Writ, yet if he can procure a *Superfedeas* out of the Chancery, it seemeth (by the words in the end of the *Superfedeas*) that this will discharge him of the arrest, or imprisonment.

Now after the party is arrested and imprisoned (upon this Writ) the meanes for him to procure a *Superfedeas* out of the Chancery, must be ;

1. Either to get some of his friends to be bound in the Chancery for him, and they to get a *Superfedeas*, *ut supra*.

2. Or else to get a Certificat to the Lord Chancellor, from three or four Justices of Peace in his behalf, signifying, that the party plaintiffe never demanded the Peace in the countrey; and further that the plaintiffe is a contentious man, & the other party of good fame : & upon such certificat (*dictur*) they will either discharge the party, or else grant him a *Superfedeas*.

This Writ of *Supplicavit*, is granted (or may be granted) in the Chancery, or Kings Bench, upon great cause shewed and proved there, and is (or ought to be) granted upon oath, that the party is in feare, &c. of some bodily hurt, &c.

But this Writ of *Supplicavit* hath heretofore oftentimes been procured and gotten out rather of malice and for vexation, then upon any needfull or just cause : And Sir Edward Coke speaking of such as maliciously shall purchase out any speciall *Supplicavit*, or *Latitat* of the peace, (and that by fraud and malice to inforce the other party, *ad redimentum vexationem*, to give them money, or to yeeld them other composition) brandeth them as Barretors, and notable Oppressours of their neighbours, oppressing thereby the poore and innocent by colour and countenance of Law, which was ordained to protect the innocent from all oppression and wrong. Neither was this a wrong onely to the party thus maliciously vexed; but also to all the Justices of Peace resident in that Countrey, taxing them (*tacite*) as though the demandant could not have justice at their hands in such case, whereas perhaps the demandant never so much as desired the same at any of their hands. And besides, the said Justices of peace, (having in all likelihood, knowledge of each party, and their behaviours) or any one of the Justices of Peace, might and would no doubt, yea and ought to have yeelded the demandant, upon request and just cause shewed to them, as sufficient and good security in the countrey, every way (as I conceive it) for his safety, as namely, as many and able sureties, and better known, and to have been bound in as great

Plz. N.  
B. 79. h.  
Lam. 86.

Co. 8. 37

See more  
before in  
this title.

great summes, and for as long time if the case should so require. So as what should move them to seek (with more trouble, charge, and delay to themselves) that security above, which they may have (more speedily, and with lesse charge and trouble) at home; I see not, but onely or chieflly the vexing and oppression of their neighbours, as aforesaid. And for that this manner of oppression grew over common, therefore by the Stat. made 21. Jac. cap. 8. it is now enacted, that all Proceſſe of the peace, or good behaviour to be granted out of the Chancery, or Kings Bench, against any person whatsoever, at the suit of any other, shall be void, unlesse such Proceſſe shall be granted upon motion first made before the Judge, or Judges of the same Court, sitting in open Court, and upon declaration in writing upon oath then exhibited, of the causes for which such Proceſſe shall be granted; and unlesse that such motion and declaration be mentioned to be made upon the back of the Writ (the same writings to be there entered of Record.) And if after it shall appeare to the said Courts, that the said causes expressed in such writing be untrue, then the Court may award costs and dammages to the party grieved, and may also commit to prison the offendours, untill they pay the said costs and dammages.

Now to conclude this businesse: If the surety of the peace be taken by vertue of a *Supplicavit*, then must the Justice of peace make returne of the Writ, and certificate of his doings under his seale into the Court from whence the *Supplicavit* did proceed; which may be done in this manner:

First, let him write upon the back of the *Supplicavit*, thus:

*Executio istius brevis, patet in quadam schedula huic brevi annexa.*

Then may the Certificate or Schedule be thus, and be filed to the back of the Writ.

The return of the Supp

**E**go Johannes Cotton miles, unus Custodum pacis Dom<sup>i</sup> Regis in Commis<sup>s</sup> Cantabrigie certifico in Cancellariam dicti Dom<sup>i</sup> Reg. me virtute istius brevis (mihi per A. B. in eodem brevi nominatum, primo deliberat.) personaliter coram me (tale die & loco) venire fecisse T. R. in dicto brevi nominatum, ac eundem T. ad sufficientem securitatem, & manucaptores pacis inveniens secundum formam dicti brevis, viz. &c. (as the Writ shall appoint) compulisse: In cujus rei testimonium huic presenti certificatione mee sigillum meum apposui, datum apud C. predictum, in Comitatu predicto, 16. die Januarii, anno regni dicti Domini nostri Charoli Dei gratia regis, &c.

The Certificate.

The Justice of peace may also therewith send the Recognisance, if he will; and may keep and stay the Recognisance untill a *Certiorari* come to him for it.

The return of a Certiorari.



And of  
the Recog.

And if a *Certiorari* be directed out of the Chancery to the Justice of peace, for removing of this Recognisance (because it was not sent up together with the certificate, as there was no necessity that it should) then that writ also may be thus answered.

Write upon the back of the *Certiorari* thus :

Li. Inr.

453.

*Virtute istius brevis ego Joh. Cotton miles. unus custodum pacis Domini Regis in com' Cantabr' tenorem securitatis pacis, de qua in hoc brevi fit mentio. (Or unde inf: a fit mentio) dicto Dom' Reg. in cancell' suam sub sigilla meo distincte & aperte mitto, prout patet in schedula huic brevi consueta.*

The sche-  
dule or  
Certifi-  
cate.

And then write the recognisance verbatim, in this manner hereunder following, and thereto set your seale.

*Memorandum quod 16. die Januarii, &c. (reciting the whole recognisance to the end) In cujus rei testimonium ego pradietus Joh. Cotton sigillum meum apposui. Datum, &c.*

And file this schedule (or note of the recognisance) to the back of the *Certiorari*.

The forme of the *Certiorari* you may see *F. N. B.* 81. c. *Vide postea ; tit. Certiorari. cap. 134.*

F. N. B.

81.

Also this form of certificat may serve where a *Certiorari* is brought to a Justice of P. to remove a recognisance of the peace, taken by him *ex officio*, without any writ of *Supplicavit*. See more *antea sub hoc tit. Surety &c.*

F. N. B.

81. b.

And if the Justice of peace shall not returne the *Supplicavit*, nor certificate of his doings therein, untill a *Certiorari* come to him for it, yet it seemeth no danger to him.

Release.

Limb.

81.

Also if the *Supplicavit* be against divers, and the demandant will release his prayer of the peace against one of them, then that release ought to be certified for him, and the Writ must be served and executed for the rest : or else, *Non est inventus*, may be certified for him, and the Writ executed for the rest.

By the Book 30. *Affisarum plac. 14.* it appeareth, that a man may be compelled to find sureties both for the good behaviour, and for the peace ; for there, one that had beaten a woman in Westminster Hall, was bound to the peace towards the woman, and was also bound to the good behaviour towards the King, &c.

And so where one shall strike another in the presence of the Justice of peace, the Justice may binde him to the peace, and also to the good behaviour. *Crompt. 140.*

So where one comming to the Sessions to preferre a bill of indictment, or about a Traverse to be tryed there, &c. if he shall be assaulted or threatned, &c. the Iustices may binde the offendour to the peace, towards the

the party, and to the good behaviour for such contempt to the King and the Court. *Crompt.* 141.

And yet it seemeth that the good behaviour, includeth the peace, and that he that is bound to the good behaviour, is therein also bound to the peace. See the usuall forms of both Recognisances, & *hic postea*. Pr. Surety. 11.  
2 H. 7. 2. b.

But if the Recognisance taken for the good behaviour, be onely *quod bene se geret, &c.* *Quere* how far these words will extend. See 2 H. 7. 2. b. where the Justices held that the good behaviour may be forfeit by the number of his people, and by the harnesse (or weapons) and the like, although they break not the peace: And they thought that he which is bound to the good behaviour, ought to carry and demean himselfe well in his appoyntment, and in his company, not doing any thing which shall be cause of breach of the peace, or to put the people in fear, dread, or trouble; and so shall be intended of all things which concern the peace: But not in misdoing of other things, which touch not the peace. See *hic postea*.

*Surety for the good behaviour.* CHAP. 74.

**T**His surety for the good behaviour, or good abearing, is granted by the Justice of peace, as well by authority of the Commission of the peace, the first of *Assign.* as also by force of the Stat. of 34 E. 3. cap. 1. P. Jac. 18

And this surety for the good behaviour is of great affinity with that of the peace, and is provided and ordained chiefly for the preservation of the peace (as that other is) as you may observe out of the usuall forms of the Recognisances; yea, by some opinions it differeth in little or nothing from that of the peace, but that there is more difficulty in the performance thereof; and the party so bound, may sooner fall into the danger of it, and of his Recognisance. For the peace (say they) is not broken without an affray committed; battery, assault, imprisoning, or extremity of menacing; whereas the good abearing may be broken, and the parties Recognisance forfeited without any of these, as namely, Lamb. 219.  
P. R. 18.  
Lamb. 119.  
P. R. 18.  
2 H. 7. 2.

1. By the extraordinary number of people attending upon the party bound. See *hic cap.* 72. & 73.

2. Or by his wearing of harnesse, or other weapons, more than usually he hath done, or more than be meet for his degree. See *ibid*.

3. Or by using words or threatnings, tending or inciting to the breach of the peace. P. K. 22.

4. Or by doing any other thing which shall tend to the breach of the peace, or to put the people in dread or fear, although there be no actuall breach of the peace.

Yet note, these four last matters, as they are the breaches of the good abearing,

abearing; so are they also causes to binde a man to the peace; yea they are breaches of the peace, and a forfeiture of the Recognisance for the peace.

*Vide tit. Surety for the peace, cap. 72.*

The book 2. H. 7. fol. 2. before recited, concludeth, that the Justices were not all certainly advised how those words, *de se bene gerendo*, should be taken: M. Bro. abridging thereof *tit. Surety*, 12 saith, That it was holden that he who is bound to the peace, ought to demean himselfe well in his port, (*sc.* Behaviour) and company, not doing any thing that may be the cause of the breach of the P. or to put the people in fear or trouble; yet the book seems to mean this of the good behaviour. See *Fitz. Surety*, 21.

But though this extraordinary number of attendants, and wearing of harness, &c. are breaches as well of the peace, as of the good behaviour, yet it may seem that this for the good behaviour, doth include the peace, and besides importeth some greater or other matters of misbehaviour, and for which the Surety of the peace is not to be granted, (although they also are against the P. and quiet or good government of the land;) and you shall find *hic cap. 75.* that this surety of the good behaviour is grantable in divers other cases, in which the surety of the peace is not grantable.

This surety of the good behaviour is to be granted at the suit of divers, and those being men of credit, and to provide for the safety of many; whereas the surety of the peace is usually granted at the request of one, and for the preservation of the peace chiefly towards one.

Also this surety of good Abearing, is most commonly granted either in open Sessions of the peace; or out of the Sessions, by two or three Justices of peace; whereas that of the peace is usually granted by one Justice of peace, and out of Sessions.

14. H. 7.  
8. 2. La.  
123. And yet by the words of the Commission, as also by the common opinion of the learned; any one Justice of P. alone, and out of the Sessions, may grant this surety of the good Abearing (and that either by their own discretion, or upon the complaint of others) as they may that of the peace.

But this is not usuall, unless it be to prevent some great and sudden danger; (especially against a man that is of any good estate, carriage, or report.)

Also this surety may be granted at the suit of some one person.

But the more difficult and dangerous this surety is to the party bound, the more regard there ought to be taken in the granting of it: and therefore, it shall be good discretion in the Justice of peace, that they do not command, or grant it, but either upon sufficient cause seen to themselves; or upon the suit and complaint of divers others (as aforesaid) and the same very honest and credible persons.

Supplica-  
vit.

Also this surety of good abearing, is often taken by the Just. of peace, by  
virtue



vertue of a speciall Writ in the nature of a *Supplicavit*, directed out of the Chancery, or Kings-Bench; and then the Iustice of P. upon such a Writ is to proceed as a Minister; (as in case for the peace, *mutatis mutandis*.) *vide antea tit. Surety for the peace, and Supplicavit.*

I once received out of the Chancery such a writ directed *Custodibus pacis in com' Cant. ac vicecomiti ejusdem com': & eorum cuilibet* (and grounded upon the Stat. 34. E. 3.) commanding us and every of us, to take four sureties (besides the party) who eoe every one should have lands of such a yearly value, or goods of such a value; and to binde the sureties every one in such a sum, and the party in such a sum, *Quod ipse boni gestus de cetero eris erga nos & cunctum populum nostrum, & quod nihil in contrarium statuti predicti attemptabit, &c.* and therein I proceeded as a Minister only.

The party against whom such a *Supplicavit* for the good behaviour shall be granted out, before he be attached thereupon, may go or send up, and give surety above in the Chancery, &c. (as here before cap. 69. for the peace) and thereupon he shall have a *Superseas* out of that Court, directed to the Iustices of P. and Sheriffe, and to every of them, commanding them to surcease to arrest the sayd party, or to do any other execution of the sayd Writ of *Supplicavit*; and that if (before the coming of the said *Superseas*) they have taken any such security for the good behaviour of the party, that then they presently release the party of such surety found by him, the former Writ of *Supplicavit* notwithstanding.

*For what cause this surety for the good behaviour shall be granted.* CHAP. 75.

1. **I**T is chiefly to be granted (by the Iustices of P. out of their Sessions) in these cases following, *viz.* First, against common Barretters, common quarrellers, and common breakers or perturbors of the peace. See what Barretters be, *tit. Barretters antea.*

2. Also it is grantable against Rioters. See hereof before, *tit. Riots.*

3. Also against such as shall lye in wait to rob, or shall be suspected to lye in wait to rob, or shall assault, or attempt to rob another, or shall put passengers by the way in fear or perill.

4. Also against such as be generally feared (or suspected) to be robbers by the high-way.

5. Also against such as are like to commit murder, homicide, or other grievances, to any of the Kings subjects in their bodies. P. Iust. 18. Cro. 139. b.

6. Also against such as shall practise to poison another.

I lately granted the good behaviour against one, for that he had bought Ratsbane, and mingled the same with Corn, and then wilfully and maliciously

cully did cast the same among his neighbours fowles; whereby most of his fowles died; and it was holden to be a good cause to binde the offendor over, by the whole Bench; and since I have known it allowed as a good cause by the Iudges of Assize.

7. The Iustice of peace also upon his own discretion (and without complaint) may binde to the good behaviour any other person, which in his presence or hearing, shall mis-behave himself in some outrageous manner of force, or fraud; and may commit such person to the Gaole, if he refuse to be bound. *Sir Francis Bacon. 11.*

It is also grantable against such as be of evill name and fame, generally, but more specially against such as are defamed or detected in any of these particulars following:

1. First, against those that are greatly defamed for resorting to houses suspected to maintain Adultery, or Incontinency.

2. Also against the maintainers of houses commonly suspected to bee houses of common Bawdrie.

One that had such lewd women found in his house, was bound to his good behaviour; (by *Wray, Anderson, and Manwood.*) 28. *El.*

3. Also against common whore-mongers, and common whores; for (by good opinion) Avowtry or Bawdry is an offence temporall, as well as spirituall, and is against the peace of the land.

Upon information given to a Constable, that a man and a woman be in Adultery or Fornication together (or that a man and a woman of evil report, are gone to a suspected house together in the night) the officer may take company with him, and if he find them so, he may carry them to prison; or he may carry them before a Iustice of peace, to finde sureties for the good behaviour.

4. Also against night-walkers, that be suspected to be pilferers or otherwise like to disturbe the peace, or that be persons of evill behaviour, or of evill fame or report generally, or that shall keep company with any such; or with any other suspicious persons in the night. 13 *H. 7. 10. & 13. E. 1. Winch. cap. 4.*

Against such as by night shall eveedrop mens houses.

Against night-walkers that shall cast mens gates or carts, &c. into ponds, &c. or shall comit other like misdemeanors or outrages in the night time.

5. Against suspected persons; who live idly, and yet fare well, or are well apparelled, having nothing whereon to live; (except upon examination, they shall give a good account of such their living.

6. Against common haunters of alehouses, or Taverns, and common Gamesters: but more specially if they have not whercon to live.

7. Against

7. Against common Drunkards; and yet by the Stat. 4. Jac. 5. such offenders must be thereof lawfully convicted: *sc.* by presentment of the offences at the Assizes, Quarter Sessions of the peace, or in the Court Leet, and thereupon a due proceeding to conviction, &c.

But now by the Stat. 21. Jac. cap. 7. any one Justice of P. (or any head officer in any Citie, &c.) hath power to convince any person of drunkenness &c. See *hic antea tit. Alehouses.*

And for the second offence of drunkenness, any one Just. of P. may (upon his own view, confession of the party, or proof of one witness upon oath) as it seemeth, bind such offender to the good behaviour, 21. Jac. cap. 7.

8. Against all such as use to go on mischief of thieves. See Stat. 18. E. 2. P. leet. 1.

For all these former offenders, and the like, are evil members in the Common-wealth; and such their demeanour and living is greatly to be suspected (and besides do seem to be more properly said against the peace of the Land, than *Avowtry* in the case before, 1 H. 7. 7.) and therefore it seemeth reasonable, just, and expedient, that the Justices of P. (upon their discretion) should convent such persons before them, and examine them their courses of life; and if they cannot yield a good reason and account of such their courses, then to bind them to their good behaviour.

Also the good behaviour seemeth grantable, against such as shall make false out-cries, or shall raise Hue and cries without cause; for these are disturbances of the peace. *Crompt. 179.*

If one man do levy hue and cry upon another without cause, either of them may be attached (and bound over) as disturbers of the peace, *P. R. 156. 29. E. 3. Fitz. Trespass. 252. tamen quare* concerning him upon whom the hue and cry is levied: Except that he be either a man of evil fame, or that there be some felony committed &c.

Also it seemeth grantable against Cheaters and Co siners.

Libellers (it seemeth) also may be bound to their good behaviour, as disturbers of the peace, whether they be the contrivers, the procurers, or the publishers of the Libell; for such Libelling and defamation tendeth to the raising of quarrels, and effusion of blood, and are special means and occasions tending and inciting greatly to the breach of the peace. See Co. 125. P. R. 1. 2.

*Libellus*, literally signifieth a little booke.

By use it hath also two significations: First, it signifieth the originall Declaration of any action in the Civill law.

Secondly, it signifieth a criminous report of any person cast abroad, or otherwise unlawfully published, and is called an infamous Libell.

Another describeth it thus, *Famo. libel. est qui impin. d. L. Et aliquod notabile*

And yet this libelling may be done after divers sorts or manners.

Co. 5. 128.



1. By scandalous Writings, be it in book, Ballad, Epigram, or Ryme, either in Meeter, or Prose as aforesaid.

2. By scandalous words, scoffs, jests, taunts or songs, maliciously repeated or sung in the presence of others.

3. By pictures or signs, as by hanging of pictures of reproach, or signs or tokens of shame or disgrace neere the place where the party thereby traduced, doth most converse: as the picture of the Gallows, Pillory, Cucking-stoole, Horns, or such like. *Co. 5. fol. 125.*

And in such cases it is not materiall whether the Libell be true or false, or the party thereby scandalized, be living or dead, or be of good name or evill.

Ibid.

And these Libellors, as also their procurers, and the publishers thereof, may be punished in divers other manners:

1. Either they may be indited for the same,

2. Or they may be sued in the Star-chamber,

3. Or the party grieved may have his action upon the Case, and recover his damages, *Lib. Intr. fol. 13. Mes cest semble quant les parols sont actionnable.*

If therefore any man shall find a libell, and would keep himselfe out of danger; if it be made against a private man, the finder may either burth the same, or else he must presently deliver the same to some Magistrate.

But if it concerns, or be made against a Magistrate, or other publique person, the finder ought presently to deliver the same to some Magistrate, to the intent that by the examination and industry of such Magistrate, the author may be found out.

Also this surety of the good behaviour, is used to be granted against the putative father of a bastard-childe. *Vide tit. Bastardy.*

It seemeth also grantable against unlawfull hunters in Parks, after their examination taken. *Vide antea tit. Hunting.*

Also it shall be granted against him that shall abuse a Justice of peace, Constable, or other officer of the peace in executing their office.

*A.* Assaulted a Constable in doing his office, it is a good cause to bind *A.* to the good behaviour. *Fitz. Barr. 202. Cromp. 135.*

The Sheriffs Bailiff upon a warrant from the Sheriff (to make execution of the goods of *A.*) went into the house of *A.* finding the doors open, and *A.* shut the doors upon the Bailiff, and so detained him as a prisoner in his house, and sir Robert Houghton one of the Judges of the Kings-Bench, thought it a good cause to grant out Proceffe *de bene gerendo*, against *A.* for thus abusing of an officer of the Law. *Anno 17. Jacobi Regis.*

*DE 4. 3.* A Justice of P. seeth a man break the P. (sc. to make an assault or affray upon *A.*) and he charged him to keep the P. and the other answerth that he will not, the Just. of P. may bind him to the good behaviour. For

For if (as one saith) contempt, or contumely, used to the person of a mans better, neither policie for example, nor Religion for peace, may tolerate, much lesse to use contempt towards, or to abuse such as are in authority, specially when they are in executing their office. See Exo. 22.28.

Nay, it seemeth that he which shall use words of contempt, or *contra bonos mores*, against a Justice of P. though it be not at such time as he is executing his office, yet he shall be bound to his good behaviour.

If a Citizen or Freeman of a City or Town corporate, shall use words of contempt, or *contra bonos mores*, against the chief officer of the City or Town, or his brethren, they are good causes to commit him to prison untill he shall find sureties for his good behaviour: for obedience and reverence ought to be yeilded to the Magistrate, for that they derive their authority from the King; and *obedientia est legis essentia*. Co. 11. 93.

Also he that shall abuse a J. st. of peace his Warrant, may be bound to the good behaviour. *Vide postea tit. Warrants.*

A man complaineth of a Riot, or Forcible Entry, so that the Justices of peace are assembled to enquire thereof, and then the party that complained will not prosecute the matter, it seemeth that the said Justices of peace may binde him to his good behaviour for this deluding them.

And so of such as shall charge another with Felony before a Justice of peace, and yet will not give evidence, &c. *Vide antea tit. Felony.*

*A.* is bound to keep the peace against *B.* only, and getteth a *Superseas*, and after *B.* releaseth him; after *A.* is arrested for surety for the P. at another mans suit, and sheweth this first *Superseas*. it seemeth he shall be bound to his good behaviour for this deceit. Crompt. 134.

Yea, whatsoever act or thing is of it self a misbehaviour, or is against the good beha. is cause sufficient to binde such an offender to the good beha.

Also by the expresse words of the Statutes, the offenders hereunder named, shall be bound to their good behaviour: By Statute.

1. Disturbers of Preachers, 1. M. 3. P. 1.
2. Destroyers of Fish-ponds, &c. or stealers of Fish, (after lawfull conviction, &c.) 5. Eliz. 21. P. Fish. 7.
3. Takers of Hawks, or Hawks eggs out of other mens grounds, after lawfull conviction, &c. P. Hawks 1.
4. Unlawfull stealers, hunters, or killers of any Deer or Conies in the night or day time, in any Park or Warren, after lawfull conviction, &c. See the Stat. 5 Eliz. cap. 21. 5 Eliz. 21
5. Popish Recusants, absenting themselves from Church 12 moneths; these shall be bound in the Kings-Bench, 23. Eliz. 1. P. Recusants 1. 3 Jac. 13. 7 Jac. 13.

But all these former offenders must be bound at the Sessions.

5. Popish Recusants, absenting themselves from Church 12 moneths; these shall be bound in the Kings-Bench, 23. Eliz. 1. P. Recusants 1.

10 E. 3. 3.  
P. R.  
don. 5.

6. He that is attainted of felony, and hath a pardon for the same, shall within three moneths finde sureties for his good behaviour; but he shall be bound before the Sheriffe and Coroners, who shall return the same into the Chancery.

Also he that is acquitted of Felony, if he be of evill fame, or of evill behaviour, it seemeth the Justices of P. upon their discretion, may bind him to his good behaviour. *Crompt* 135.

39 Eliz.

7. Such persons as shall disturbe the execution of the stat. 39. *Eliz.* 4. concerning the punishing or conveying of Rogues; any two Justices of P. may binde them to their good behaviour. *Vide antea tit. Rogues.*

8. So of such as shall disturbe the execution of the stat. for the reliefe, setting on work, or setting of the poor. *Vide antea tit. Poore.*

7 Jac. 4.

9. The mother of a Bastard child (which may be chargeable to the Parish) for her second offence shall be committed to the house of Correction, there to remain untill she can put in security for her good behaviour, &c. *Vide antea tit. Bastardy.*

10. Such as have their houses infected, or be themselves infected with the plague, and being commanded to keep their houses, shall disobey, &c. they shall be bound to their good beha. for one whole year, *vide antea tit. Plague*

Forf. of  
the Recog  
nissance.  
Lamb.  
121.

What Act shall be a forfeiture of the Recognisance taken for the good behaviour. See here before, *cap. 74.*

Also it seemeth, that the party bound to his good behaviour for offending against any the Statutes here before mentioned, if he shall afterwards offend against any the sayd Statutes, he shall thereby forfeit such his Recognisance.

To be drunken, is a breach of the good behaviour; as Sir *Nicho: Hyde* did deliver it his charge at Cambridge Lent Assizes, *Anno 3. Caroli Regis.*

The form of a warrant for the good behaviour, *Vide postea tit. Warrants. cap. 121.*

The form of the Recognisance for the good behaviour, *Vide postea tit. Recognisances. cap. 123.*

Release.  
Lamb.  
126.

Whether the surety of the good behaviour (taken upon complaint) may be released by any speciall person; some do doubt it; because it seemeth more popular than the surety of the peace; yet others do hold that it may be released; either by the Justice of P. himself that took it, in discretion, or by the party upon whole complaint it was granted, even as that for the peace may.

Superf.  
dear.  
P. R. 22.  
Crompt.  
237.  
Crompt.  
146.

It seemeth also a *Superf.* of the good behaviour may be granted by the Justices of P. (as well as for the peace, *mutatis mutandis*) upon good sureties taken by the said Justices, of the party, to be of good behaviour.



If a man be bound to the good behaviour (before Justice of peace) and to appear at the next Assizes or Sessions, yet the party bound may by a *Certiorari* remove the Recognisance (into the Chancery, or Kings-Bench) before the day, and then he shall not need to appear at the Assizes, or Sessions; for they shall have no Record, whereupon he may be called there. *Certiorari.*

*Forcible Entry, and forcible Detainer.* CHAP. 76.

**T**HE Common Law (being the preserver of the common peace of the Land) hath alwayes abhorred force as the capitall enemy thereto, Co.3. 12. and yet before the Reign of King *Richard* the second, the Common Law seemed to permit any man to have entred into lands and Tenements with force and arms, and also to have kept and detained them with force; where his entry was lawfull.

And at this day, if a man doth enter into any lands or Tenements with force, (or multitude of people) where his entry is lawfull, he is not punishable by action, either at the Common Law, nor (by action) upon any statute; for where the title of the Plaintiffe is not good, there he hath no cause of action, although the Defendant doth enter with force: but in such case he that entreth with force, must be indicted upon the statute; or otherwise complaint may be made thereof to the Justices of Peace: and as well upon such indictment, as upon such complaint, the offender shall be punished; yet the party (*ousted*) shall not be restored without indictment, and the force thereby found. *Vide antea tit. Forcible Entry.*

And for the better restraining of such force and forcible Entries into Lands and Tenements, and to inflict condigne punishment upon the offenders therein, it was first provided by the statute 5.R.2. that no man should enter into any Lands or Tenements, with force or multitude (though he had good right or title to enter,) but should enter only in peace and lawfull manner. See *Pla.86.b.*

But this Statute provided no speedy remedy, nor extended to holding with force, nor gave any speciall power therein to the Iustices of P. (but upon a generall enquiry, in a generall Sessions of the peace, and not otherwise) and therefore by another statute made 15. R.2. it was further provided, That if any man should detain (or hold) with force, after such forcible Entry made, upon complaint therof made to any Iustice of P., the same Iustice shall presently take and come with the power of the County, and shall go and view the same, &c. and if the same Iustice do finde any holding the same forcibly, that then they should be imprisoned by the same Iustice, as convict by the Record of the same Iustice.

Yet neither of the former stat. extendeth to those that entred peaceably,

Lamb.  
138.  
Crompt.  
67.

15 H. 7.  
17.  
Br. Forc.  
11.

5 R.2. 6.  
7.  
Regist.  
182.

15 R.2. 1.  
c.24.

bly, and then held with force, nor yet doth give any remedy, if the parties who made the Entry with force, be removed before the coming of the Justices of P. nor yet ordained any pain against the Sheriffe, if he did not obey the precepts of the said Justices, for to execute the said Stat. when the said Justices would enquire of the same. And therefore the said Stat. of 8. H. 6. doth give remedy, first where any man shall enter with force, or shall enter peaceably and after detain, hold, or keep possession by force.

Also these two last Statutes of 15. R. 2. and 8. H. 6. do enable any one Justice of peace to give present remedy, viz. to remove the force, and commit the offenders, in cases of Forcible Entry, or holding against the aforesaid Statutes.

And the said Stat. of 8. H. 6. extendeth further, reaching the offenders if they were removed or gone before the coming of the Justices; giving the Enquiry, and Restitution, and also punishing the Sheriff that shall not obey the precepts of the Justice in this behalfe.

So that these Statutes do now give full remedy, and do prohibite, and are made against these three degrees or sorts of force, viz. against,

Fitz. 248

c.

Lamb.

143.

1. Such as enter peaceably, and then hold forcibly.
2. Such as enter with force, and then hold peaceably.
3. Such as do both enter forcibly, and hold forcibly.

I have (here before) already shewed in some measure how the Justice of peace shall demean himselfe in the execution of these statutes; now I will proceed to give him some further light in this business, in these particulars following.

1. First, what is a Forcible Entry, and what is a forcible holding, within the meaning of these statutes.
2. Who may commit a Forcible Entry, &c. and upon whom.
3. Where a force, or forcible holding, is justifiable, or lawfull.
4. What and how many severall remedies the party hath, that is so put out, or kept out of his possessions.
5. The manner of proceeding of the Justice of peace by Enquiry.
6. Of Restitution to be made to the party so put out; by whom, and to whom.
7. What causes there may be for staying the Justice of peace from making Restitution.

*What is a Forcible Entry, or holding, Within  
these Statutes. CHAP. 77.*

**O**ur Law taketh knowledge of two manners of force; the one may be termed a force in judgement of Law, which accompteth every private

private trespass to be a force; so as if I do but passe over another mans ground without licence, he may have his action of trespass against me, *Quare vi & armis, &c.*

The other manner of force is more apparent, and alwaies carrieth some fearfull shew, and matter of terror with it.

This last sort of force is that which is prohibited by these Stat. and therefore note, that every force punishable by these Statutes, must have one of these two badges, *sc.* it must be either *Manu forti*, with force or strong hand, or *Multitudine*, with multitude of people, *Lamb. 145. & 5. R. 2. cap. 7.*

*Manu forti*, viz. either with apparent violence (in deed, or in word) offered to the person of another, as threatening speeches, turbulent behaviour, or actuall violence; or else that they be furnished with offensive weapons (by them not usually born,) and this may be done by one person only. *Vide postea sub hoc tit.*

*Multitudine*, *sc.* with company more than usually they have attending on them, 10 H. 7. 12. Now by some opinions the Law calleth a multitude, when there be ten or more in one company, *Multitudine decem faciunt.*

And yet Sir Edward Coke, upon *Littleton* 257. saith, That he never read it restrained by the Common-Law to any certain number, but left to the discretion of the Judges, or Iustices.

Now one may commit a Force, and three may commit a Riot, &c.

If therefore one or more persons shall come weaponed (especially with weapons not usually borne) to a house or land, and shall violently enter therein, this is a forcible entry within the meaning of these Statutes, *Forcible Entry. Lamb. 146.*

Much more, if (being so entred) he or they shall there offer violence, or fear of harm to the person of any that is in possession thereof; most of all, if he or they shall forcibly and furiously expell and drive another out of such his possession.

So is it, if one shall enter peaceably (the doore being open, or onely latched,) and after he is in the house, he shall forcibly put another out of his possession.

So is it, if he or they which shall enter peaceably, shall after their entry offer apparent violence, threatnings, or fear of harm to the person, if any that is in possession, to the intent to get him out, and to make him leave the possession, though they do not put him out of possession, much more if they get the possession thereby.

If he or they that have entred peaceably, shall after use words to any in possession to this effect, as to say they will hold it or keep it, though they die for it, or in spite of the other, or such like, or other threatening words, this maketh it a forcible entry.



Lamb.

146.

Crompt.

69.

Co. L.

257.

10. H. 7.

12.

Br. Forc.

30.

Lamb.

146.

So it is, if divers persons shall come with weapons (not usually borne by them) to a house that is open, or to ground, and shall there enter peaceably without any disturbance; yet this is a forcible entry, for it shall be intended that they would have used force, if they had been resisted.

So it is, when the master entereth into an house, or land, being attended with a greater number of servants than usually do wait on him.

Note, that though a man do actually use no force in his entry, yet if he do come so appointed either with weapon, or company, that other men may be reasonably affraid that he mindeth to make his way by force, rather than he will fail of his purpose, it seemeth to be a forcible entry.

And if three or more shall enter peaceably, (upon another being in possession) and shall continue there peaceably, though this be no forcible entry or detainer, yet it may prove a Riot in regard of the number.

Now there are two sorts of force as is aforesaid. *sc.*

1. An actual force; as with weapons, or number of persons, &c. not usual.

2. A force implied in Law; as every Disseisin, Rescous, and Trespass, implieth a force, and is *vi & armis*. Co. L. 257.

A Tres-  
pass.

Also it seemeth that every entry into another mans house, or ground, which is made with force, *sc. manu forti*, or *cum multitud.* either with apparent violence offered to the person of any other, or furnished with weapons, or company, which may offer fear, though it be but to cut, or take away another mans Corn, Grass, or other goods, or to fell or creep wood, or do any other like trespass, and though he do not put the party out of his possession, yet it seemeth to be a forcible entry, and an actual force, punishable by these Statutes. See Lamb. 145.

Lamb.

145.

But if the entry were peaceable, and after such entry made, they cut or take away any other mans Corn, Grass, Wood, or other goods, without apparent violence, or force, though such acts are accounted a Disseisin with force, yet they seem not to be punishable by these Stat. *sc.* the Justices of P. are not to remove, imprison, or fine such offenders.

Also, if one or more shall enter into another mans house or land peaceably, and after his or their entry, shall by force or violence, cut or take away any Corn, Grass, or Wood, &c. or shall forcibly and wrongfully carry away any other goods there being; this seemeth to be a forcible entry, punishable by these Statutes.

Crompt.

70.

11 H. 4.

16.

20 H. 6.

11.

So is it, if a man shall distrain with force for a Rent (Be it due, or not due) this doth countervail an entry with force. Lamb. 147 Br. Force. 1.

And in these cases of trespass only, the Justice of P. (upon complaint to him made) may, as it seemeth, remove such force; and upon view thereof, may imprison and fine such offenders.

If a Disseisor hath entred peaceably, and being entred, shall presently By words threaten to kill the disseisee (if he re-enter) this seemeth a Forcible Entry in the Disseisor. See more *postea sub hoc tit.*

But note, that a Forcible Entry cannot be without an actuall Entry: for the words of the Statutes be, Whosoever doth enter, &c. *2 H. 7. 16. 1. Et. Forc. 1.*

Note also, if one that hath right to enter upon land, shall goe with divers in his company, and with weapons over the Land whereto he hath right, to the Church, Market, or some other place; this is no Entry with force, except he shall express his intent, that he doth enter there claiming the Land. *25. C. 1. 1. Crom. 70.*

Note also, that if a man shall enter with force (into House or Land) although he obtaineth not, nor getteth the actuall possession thereby, yet shall he be imprisoned and fined for the only entring with force (as it seemeth.) See the Statute: but restitution is not to be made, but onely where there is a forcible putting out, or a holding out, of another out of his possession and found by a Jury.

If by fair means, a man (whose Entry is lawfull) shall perswade or intice them which are within the House, to come out, and then (the doore being open, or shut by the latch onely) he shall enter peaceably, without multitude, offensive weapons, or other violence; this Entry seemeth to be justifiable. *Lawfull.*

So is it, if he shall enter peaceably, and then by gentle perswasions, can send them out that are within the house, and after shut the doore, and keepeth them out; this seemeth justifiable, so that afterwards he holdeth it not forcibly, nor useth violence or threatening speeches.

So is it, if I shall take a man being out of his House, and then I doe put or send into the House my Servant (or some other) in peaceable manner, and doe hold away the other by imprisonment of his person; this is no forcible Entry nor Detainer within these Statutes, but a false imprisonment, punishable by action onely. *Limb. 149.*

So it is, if he whose Entry is lawfull shall enter peaceably into his house (the doores being open, or shut by the latch onely) and being so entred, shall continue and abide there peaceably; this is justifiable. And if they which were before in possession, shall put or thrust him out forcibly, this is a forcible Detainer of their parts. See more hereof *sub hoc tit. postea.*

Forcible Detainer must be understood of a forcible detaining of the possession of Lands or Tenements, and not of the person of a man, as before. *Forcible Detainer. 1. Lamb. 149.*

Note also, though the Entry were at the first peaceable, and lawfull, yet if there be after a holding by force, it is punishable by the Statute except, where there was at the first a lawfull and peaceable Entry, and thereupon a

*Lamb. 164.* lawfull possession, peaceably continued by the space of three yeeres together, without interruption; for there a man may hold and keep such possession with force against all others (saving against the Kings Officers.)

*Lamb. 148.*  
*P.R. 41.*  
*Crom. 70.* If the Justice of Peace shall come to the House or place, that is supposed to be holden with force, and there shall finde the doors or gates shut, and he or they within shall deny him to enter, (or will not suffer him to enter) this is a forcible holding and Deteiner, though there be no weapons shewed or used, and though there be but one person in the House, or upon the ground.

*Ibid. 3* So it is, if when the Justices of Peace entreth the house or ground, hee shall finde there any persons in harnesse or otherwise armed, or having harnesse, armour, or other weapons (not usually born by them) lying ready by them, this is forcible Deteiner.

*Ibid.* So it is, if the Justice of Peace shall finde in the house, any great number of people, other than the ordinary family, or company.

*P.R. 41.* Also if a man shall enter peaceably into a house, and after shall bring into the same more weapons than he and his ordinary family doe usually weare; or shall make any use of such weapons as he doth find in the house, to defend his possession therewith; these are forcible Deteiners within these Statutes.

*Ibid.* If a man that hath peaceably entred into an house, will bestow men with force, (sc. with harnesse, guns, or other weapons) in some other house or place, not far distant, to the intent that they may be ready to assault such as shall enter upon him, this is a Deteiner with force.

*Lamb. 149.*  
*Cromp. 69.* So is it, if the Disseisor of an house or land, shall forestall the way of the Disseisee, with force and Arms, so that the Disseisee dareth not enter, or come neer thereto for feare of death, &c.

So if a man shall distrain for a Rent Service, or a Rent Charge, and a Rescous shall be made unto him, this is a Disseisin with force. *Co. L. 161. b.*

*P.R. 39.* So is it, if a man shall keep his cattle in another mans ground by force, claiming Common there, where hee hath no Common; and in this case, the Justice of Peace upon complaint to him made, may remove this force, and upon view thereof may record it, and may commit such offenders to prison, and may fine them therefore, as it seemeth, but cannot award restitution.

*By words.* Also there may be a forcible deteining of possession by word onely without any forcible act.

*Lamb. 149.*  
*Cromp. 70.*  
*P.R. 39.* As if *A.* hath wrongfully (though peaceably) entred into the house, or upon the land of *B.*: and hath put out *B.*: and shall presently threaten or say so *B.*: that if hee doe come thither again to enter, hee will kill him, this seem-



seemeth a forcible Entry by *A*. And if *B*: shall afterwards come again to make his Entry, and then *A*: shall threaten to kill him, if hee entreth there; this is a forcible Deteiner in *A*.

And it seemeth that to threaten to maim, beat, or to doe other bodily hurt to *B*: in the case aforesaid, amounteth to a forcible Entry or Deteiner, for that death may ensue upon such beating or hurt. See 39 H. 6. 50. 7 E. 4. 21.

But to threaten to burn the house or to spoyle his goods therein, (if *B*: shall come thither, to enter againe) this seemeth not to amount to any such matter, for that *B*: may afterwards have his action for the burning of his house, or spoiling of his goods, and shall thereby recover damages, to the value thereof, &c. 39 H. 6. 50. Br. Dures 9. 13, 16.

Also when *B* shall come to make his Entry as aforesaid, if *A*: shall say to him, that he will not open the door, this is no forcible Deteiner. *Crompton* 70.

So it is if *A*: be in possession of a house, or hath a Lease thereof at the will of *B*: and after *B*: entreth into the house, and commandeth *A*: to goe out, and to leave him the possession, and *A*: will not goe out, this is no force; for refusing, or denying onely to go out, is no force, unlesse there be withall some forcible act or threatning speeches: *ubi factum nullum, ibi for- tia nulla*, where there is no fact, there is no force. Co. 4. 43. *Crompton* 73.

*A* morgageth his house to *B*: upon condition, that if *A*: shall pay to *B*: such a day 40 pound, then the said mortgage (and feoffment to be void) and by agreement of them both, *A*: the morgager continueth the possession untill the day of redemption, at which day *A*: payeth not the forty pound, and after *B*: commeth to re-enter, and *A*: keepeth the possession by force, this is a Deteiner by force in *A*: This was Master Rich: Godfreys opinion between *Willows* and *Thurger*.

The Disseisor maketh a gift in tail to *B*: who keepeth the Land with force at the time when the Disseisor maketh his claime, which claime is made within the view, so neer as he dareth, for feare of death, battery, or other bodily hurt; if *B*: after such claime shall continue the possession with force, he may be thereof indicted, &c. for this amounteth to a new Entry, and a Deteiner with force by *B*. *Crompton* 59. *Lit.* 129.

And note, that wheresoever mine Entry is lawfull, if the possession be detained or holden from me by force, I may pray the aid of the Justices of Peace to remove such force as it seemeth.

If a man hath a Rent or Common of pasture out of another mans land, Rent, and comming to distrain for his rent, or to use his Common, he is so forcibly resisted by the Tenant of the Land, that he cannot, or dareth not, either distrain for his Rent, or take the benefit of his Common, this is a holding *Lamb* 149. *Crompton* 70. *P.R.* 63.

force in the Tenant, and punishable by these Statutes.

*Cramp. 99.* So it is, if the Tenant of the Land shall forehall the way with force and arms, or shall threaten him (that hath the Rent or Common) so that hee dareth not to come to distrain for his Rent, nor to take his Common.

*Ibid.* So it is if a man shall distrain for his Rent, and the Tenant of the Land shall make Rescous with force and arms.

*Br. imp. 70.* And in these cases (of a Rent, or Common) the Justice of Peace, (upon complaint to him made) may remove such force, and upon view of such force, may record it, and may therefore imprison and fine such offenders, but cannot award restitution, (sc. cannot restore the party to his Rent or Common, which are to be taken, and used in another mans Land) for restitution is not to be made, but onely of House or Land, as you may see hereafter.

*The persons.* One person alone, may commit or make a forcible Entry, or detainer, if so be he do it with offensive weapons not usually born, or doe use turbulent behaviour, violence, or threats, &c. to the affray or terrour of others; or do refuse to suffer the Justice of Peace to enter.

*Cramp. 69.* An Infant of the age of eightene yeeres, by his owne act may commit a forcible Entry or Detainer: and so hee may though hee be under eighteen, if so be that hee be of the age of discretion; (sc. of the age of fourteen yeeres.) See *Perkins f. 10. b.* and it seemeth the Justice may fine him therefore. But yet it shall be good discretion in the Justice of Peace to forbear the imprisonment of such infants. See *B. imp. 43. 45. 75. 101. & hic postea de Imprisonment.*

For an Infant shall suffer no imprisonment or corporall pain for any offence by him committed against any Statute, wherein an Infant is not expressly named.

But yet he may forfeit the penalty of a penall Statute, and so by a penall Statute may forfeit and lose his goods, if he be of yeeres of discretion. See *Doct. & Stud. 147. 148.*

And an Infant of the age of eightene yeeres, may be a Disceisor with force, and may be imprisoned for the same. *22 Edw. 4. fol. Old Nar. Br. 128.*

That Infants may be imprisoned by expresse words in some Statutes, See *hic cap. 45.*

But if an Infant commandeth another to enter, or hold with force to his use, which is done accordingly; yet the Infant shall not be punished for such offence, for his commandement therein was void.

*Cramp. 69.* Also a *Feme covert*, (by her owne act) may commit a forcible Entry or Detainer; and upon the Justices view of the force, she shall be imprisoned therefore (and it seemeth also she may be fined in such case:) But such fine set

let upon the Wife shall not be levied upon the husband; For the husband shall never be charged for the act or default of his Wife, but when he is made a party to the action, and judgment given against him and his Wife, *Co. 9. 72. & Co. 11. 61.* Br. imp. 45. 33. See more after in the tit. of Riot. 2 H. 7. 19. Br. Force 29

Divers do enter with force to the use of *A*: who is not then present with him, but doth after agree thereto; this agreement after maketh *A*: to be a Disseisor, but not to be punished for the force, *quare* if *A*: had counselled, consented, or agreed thereto before the Entry; it seemeth that a commandment, consent, or agreement before or after, though it may make one a Disseisor, yet it is not to be punished by the Justice of Peace, upon these Statutes, for that a forcible Entry cannot be adjudged against a man, without an actuall Entry be also made by him, or he at least present.

But if *A*: that shall command or counsell others thereto, shall also be present at the time of the Entry, although hee doth then nothing, yet hee is now become a principall, and punishable by these Statutes, *Vide* *17. Ass. pl. 14.* Consent. 1

If divers do come in one company, to enter into Lands, &c. where their Entry is not lawfull, and all of them (saving one) did enter, and demeane themselves in peaceable manner, and one only doth enter with force, or (after Entry made) doth use force and violence, This shall be adjudged a Forcible Entry in them all (although the force were against their wils;) for where divers doe come in one company to any place to the intent to do any unlawfull thing, be it robbery, homicide, riot, affray, or any trespass, here the act of one of them shall be adjudged the act of all that part that are present, and every one of them shall be adjudged a principall doer, although they stand but by and doe nothing. So it seemeth, though some of them came without any intent of evill, if they came together in company with the other offenders, or if they came after, yet if they be either aiding, or countenancing to the offenders, they shall be also adjudged principall doers as well as the other. And yet *Finch* Chief Justice, 2 H. 8. made a difference where their intent at the first was to do an unlawfull Act, and where not. *Cro. 161.* Co. 9. 67. 112 & 113. See hereof after in the tit. Murder. Fitz. Coron. 314 350.

An Indictment upon the Stat. of 8 H. 6. for the King is not good; for the King cannot be disseised, nor put out of his Freehold; neither can the King bring any action upon the Statute of 8 H. 6. nor any other action which might prove him out of possession of the land. *P. R. 39. b.* The persons put out. Co. 1. 46. & 10. 113.

And if the Kings termor be put out by force, he cannot prefer a Bill of Indictment (upon the Statute of 8 H. 6.) that he was put out, and the King disseised: But he must have an Information of Intrusion in the Exchequer. Yet it seemeth, that upon complaint made to the Justice of Peace by the The Kings Tenant. Crompt. 69



Kings termour of any such force, the Justice of Peace may, nay, ought to remove the force, and upon his view thereof to record it, and to commit the offenders to prison, and may fine them, and after such force removed, the Kings termour may presently re-enter (if he can) in peaceable manner.

If a Forcible Entry or Deteiner shall be made upon any Lessee for yeers, Tenant at will, or upon a Copiholder, whether it be by an estranger, or by the Lessor, or by the Lord, the Justices of Peace upon their view thereof are to remove such force, and may commit to the prison, the parties which made such Entry, or which shall hold it with force, and may fine them: But whether the Justices of Peace might make restitution, and set them (*sc.* the Lessee for yeers, Tenant at will, or Copiholder) into their possessions again, hath bin much questioned.

Lessee for  
yeers.  
Copy-  
holders.  
*Lamb. 149.*

Some hold opinion that the Justices of Peace might put them in possession again; and of this opinion was M. *Marrow*, and M. *Lambert*: and to maintain this opinion, these Reasons may be given.

First, for that the words of the old Statutes seemeth to warrant it: For the Statute of 15 R. 2. in the preamble thereof, as also the Statute 8 H. 6. in the body thereof, hath this word [*Possessions*] which word most properly doth extend to a Lease for yeers, &c.

Againe, that clause of the Statute 8 H. 6. which provideth the restitution, is thus; If it be found that any doth contrary to this Statute, then the said Justices, &c. shall put the party so put out, in full possession, &c.

Now it cannot be denied, but that he which by force expulseth the Lessee for yeers, Tenant at will, or a Copiholder, doth contrary to this Statute, although they be the parties put out.

Againe, the same mischief and inconvenience, which these Laws do labour to remove; is to Lessee for yeeres, Tenant at will, and to the Copiholder.

*Co. 11. 33. 2.*  
*34.*  
*Plow 178.*

And we may finde it usuall, that where Statutes are made for to remedy any common mischief, there (to help things in the same degree) one action, thing, place, and person, hath in construction been taken for another: And a good expounder (saith Sir *Ed. Coke* 11. 34.) maketh every sentence to have his operation to suppress all the mischiefs before the said Act, and principally those that are specified in the Act.

*Co. 3. 7. &*  
*12. 73.*

And againe, saith hee, it is the office of the Judges always to make such construction of Statutes as may repress the mischief, and advance the remedy, and to suppress all evasions which may continue the mischief, and to adde force and life to the cure and remedy, according to the true intent of the makers of the Statute. *Co. 11. 73. b. & Co. 3. 7.*

Others hold the contrary, *sc.* that Lessee for yeers, nor a Copiholder, or  
Te-

Tenant at will could nor have restitution by the hands of the Justices of Peace: and this seemed to be the common opinion; their reason was;

For that the words in the Statute of 8 H. 6. (in that clause which specially provideth the restitution) are thus; The said Justices, &c. shall re-seise the said Lands or Tenements, and thereof shall put the party so put out, in full possession, &c. which words, [*Lands or Tenements*] are onely to be understood of them that have inheritance, or a free-hold at the least: but to this it may be answered, that the said Statute of 8 H. 6. in the body thereof hath these words: Where any do make any Forcible Entry into Lands, Tenements, or other possessions, or them hold forcibly, &c. which words [*Possessions*] extendeth to a Lease for yeers, &c. And then the words [*Possessions*] being in the same Statute, we shall find that a Statute is to be expounded upon all the parts thereof together, and not upon one part alone by it selfe: to which purpose, see *Lincolne Colledge Case*, and *Doctor Bonham's Case*, in Sir *Edwards Cokes Reports*.

Reg. 174.

co. 3. 59. b.  
& 8. 117.

But it seemed to those which held this last opinion, that if a Lessee for yeers, Tenant at will, or a Copiholder, be forcibly put out, or held out by any estranger, if they will have restitution, their Indictment must be made and preferred in the Lessor, or Lords name, and the Jury must find that the Lessor, or Lord of such Copihold, is disseised, and the Lessee or Copiholder, is put out with force: And hereupon the Lessor or Lord shall have restitution; and so by their restitution, their Lessee or Copiholder is restored also; but such Lessee or Copiholder, cannot (say they) preferre an Indictment in their own name, upon the Statute, 8 H. 6. for that they have no freehold.

Cromp. 162.

And to that purpose I finde some presidents of Indictment in this forme; *cro. 247. 27. viz. In unum messuag. apud &c. ad tunc existent, liberam tenement. M. D. Arnis. vi & armis, &c. Manu forti, & illicite super possessionem cujusdam I. L. tunc firmari pred. M. D. messuag. pred. intraverunt, & ipsum I. L. vi & armis, ac manu forti & illicite tunc inde expulerunt & eiecerunt & pref. M. D. inde injuste disseisiverunt, &c. See postea titul. Presidents.*

Also by this opinion if a Lessee for yeers, Tenant at will, or a Copiholder, be forcibly put out by their Lessor or Lord, such Lessee, or Copiholder, hath no remedy at all by Indictment upon this Statute for they have no free-hold, and therefore can have no restitution upon this Statute.

Also by this opinion, if the Lessee for yeers be put out by his Lessor, and after the Lessee putteth out the Lessor again forcibly, the Lessee shall not be indicted; neither shall the Lessor have restitution upon this Statute; for that the Lessor is not ousted nor disseised of his freehold: for the possession of the Lessee is such a seisin of the Lessor of his freehold; that hee may have an assise if his Lessee be put out.

And

And so of a Copiholder, not having forfeited his estate, if his Lord notwithstanding shall enter upon him, and put him out, and the Copyholder shall re-enter upon his Lord with force, the Copiholder shall not be indicted, nor yet the Lord restored, *Causa qua supra*.

And so by this last opinion, the very mischief specified and intended to be helped by these Statutes, should seem still to remain in all cases betwene such Lessees and Copiholders and their Lessors or Lords, so as there can be no enquiry, nor restitution in cases of Forcible Entry or Detainer between them.

But howsoever the Law be taken for the indictment or restitution thereupon, yet in case that Lessee for yeers, Tenant at will, or a Copiholder, be forcibly put out, or held out, either by a stranger, or by their Lessor or Lord, the Justices of Peace, or any one of them, by the Statute 15 R. 2. c. 2. might safely remove the force, upon view thereof, and committ the offenders to prison, and then the Lessee for yeers, or Copiholder, might presently re-enter, if peaceably they could so do, and so might have his possession again, without any restitution made him by the Justices.

But now by the statute made *Anno 21. Jacobi Regis, cap. 15.* it is enacted; that such Justices or Justice of Peace, as by reason of any act of Parliament now in force, are authorized upon enquiry to give restitution of possession unto tenants of any estate of freehold, of their lands or tenements, which shall be entred upon with force; or from them withheld by force, shall now have the like and same authoritie (upon indictment of such forcible entries, or forcible with-holdings before them duly found) to give like restitution of possession unto tenants for terme of yeares, tenants by copy of Court Roll, guardians by Knights service, tenants by *Elegit*, Statute-Merchant, and Staple of lands or tenements by them so holden, which shall be entred upon by force, or holden from them by force.

Weapons. Now to shew something more, what the law accounteth to be force, and what weapons be offensive in these, and the like cases,

Co. L. 162. Master *Bracton* saith, *Omnes illos dicimus armatos, qui habent cum quo nocere possunt*; which have any thing about them, wherewithall they may strike or hurt.

And therefore to have harness, guns, bowes and arrows, crosbowes, halberts, javelins, bills, clubs, pikes, pitchforkes, or swords not usually borne by the parties, shall be said to be *vis armata*.

Againe, *Si quis venerit cum armis, & dejecerit: vis tamen armata dicitur, sufficit enim terror armorum.*

Co. L. 162. *Si quis venerit sine armis, & in ipsa concertatione, ligna sumpserit, fustes aut lapides, vis dicitur armata.*

And



And so to use casting of stones, hot coales, scalding water, or lead, or any other thing wherewith one may hurt the person of another, shall be said to be *vis armata*.

Lawfull force. CAP. 78.

**VV** Here a force, or forcible defence is justifiable, and where not, Force being opposed against the law, is utterly forbidden; but <sup>Pr. 41.</sup> being used in the maintenance of the law, and with the warrant of law, it is allowed, for that it maintaineth the peace of the Realme: And therefore force may lawfully bee used by all the Kings officers, ministers and subjects thereunto deputed for the execution, or advancement of Justice, or of the Judgements of the law.

¶ And so first it is a lawfull force, whereby all offenders in treason, felony, and other great crimes, be pursued, apprehended, carried to prison, and receive there condigne punishments.

It is a lawfull force, whereby the Sheriffe and his officers doe apprehend any person by vertue of the Kings Writ.

It is a lawfull force, whereby Justices of Peace doe remove unlawfull entries, or holdings of possessions, and repress rioters, and doe arrest and send to prison such offenders.

And in these, and the like cases, the Kings officers (*sc.* the Sheriffe, Justice <sup>3.H. 7.</sup> of P. and Constable) may take the helpe of others (what number they shall thinke meete) to assist them, when need shall require. See hereof *Postea in tit. Posse Comitatus.* <sup>Br. Riots. 3.</sup>

Also it is a lawfull force, which Justices of Peace, Sheriffs, Coroners and Constables shall use in apprehending, or committing to prison such as within their severall jurisdictions, and in their presence, shall in any sort break, or attempt to disturbe or breake the peace, and they may therein take the assistance of others as aforesaid.

Also in these cases following, it is lawfull for the Kings officers, by force <sup>P. R. 41.</sup> to breake open a mans house, to arrest offenders being therein, if the doores shall be all shut, so as the officer cannot otherwise enter the house, *viz.*

1 For the apprehending of any person for treason, felony, or suspicion of <sup>Co. 5. 92.</sup> felony. <sup>13.E. 4. 9. Br. Coron. 159.</sup>

2 Where one hath dangerously wounded another, and then flying into an house, the Constable or other Officer, upon fresh suit, may breake open the doore, and apprehend the offender.

So may any other persons besides the officer, as it seemeth, <sup>7.E. 3. 19.</sup> *Crompt. 171.*

3 Where there shall be an affray made in a house, and the doores shut, the Constable, &c. may breake into the house to see the peace kept.

4 So upon a forcible entry, or detainer found by inquisition, before Justices of peace or viewed by the Just. themselves. See here *cap. 22*.

5 Upon a *Capias utlagatum*, in any personall action, as also upon a *Capias pro fine*, directed to the Sheriffe, the Sheriffe may breake open the doores, &c. *27. Ass. 35.*

6 Upon a Warrant or Proceffe, for the apprehending of any popish recusant being excommunicate, the officer may breake open the house, Stat. *3. Jac. 4. P. Rec. 52.*

7 Upon a warrant for the P. or good behaviour, the Constables may breake open the house, by the opinions of *Popham* and *Clerke*, Justices of Assise at *Cambridge Assises*, *3. Jac. Reg.*

8 Lastly, in all Cases where the King is party, or hath interest in the business, the Officers may breake open the doores as aforesaid: For no mans house shall be a castle against the King. *Co. 5. 91.*

*Co. 5. 91.*  
*13 E. 4. 9.* And yet the Sherife not his officers may not breake open any mans house, to execute the Kings Proceffe (upon the body or goods of any person) at the suit of any subject, *Co. 5. 92. 95.*

But when a house is recovered by any reall action, or by *Ejectione firma*, there the Sherife may breake the house, and deliver seisin or possession to the demandant or plaintife, &c. For after judgement, it is no more (in the right or judgement of law) the house of the tenant or defendant. *Co. 5. 91.*

*Co. 5. 91.* But note, that the officer before he breake open the house or doores of any person, he must first signifie the cause of his coming, and desire that the doores may be opened unto him.

Forcible  
defence  
lawfull.  
*Co. 5. 91. &*  
*11. 82.*  
*21. H. 7. 39.* Note also, although no man may forcibly keepe his house against the Kings officers in the cases aforesaid, yet every mans house is (to himselfe his family, and his goods) as his Castle, as well for his defence against injury and violence, as also for his repose and rest. And therefore the law doth give to dwelling houses divers priviledges.

1 First, that it is a mans Castle for his defence as aforesaid. See *plus infra*.

2 Also a mans house hath the priviledge to protect him against any arrest by force of any proceffe at the suit of any subject as aforesaid.

*Co. 11. 8.* 3 A mans house (in some cases) hath a priviledge against the Kings prerogative, for it hath beene adjudged that salt-peter-men cannot dig in the mansion house of any subject, without his assent, in regard of the danger that may happen thereby in the night time, to the owner, his family, and goods, by thieves and other malefactors, *Co. 11. 82.*

*Co. 5. 91. &*  
*11. 81.* 4 If thieves shall come to a mans house to rob, or murder him, he may lawfully

lawfully assemble company to defend his house by force; and if he or any of his company shall kill any of them in defence of himselfe, his family, his goods, or house, this is no felony, neither shall they forfeit any thing therefore.

5 Also a man that is in posses. of a house peaceably, and doubteth that another (who indeed hath more right to the posses. and who may enter) will enter upon him, here he which is in poss. may defend and keepe his poss. of the house with his ordinary company, and may justifie to beat the other which shall attempt to enter upon him: But if he kill him, it is felony: nay he in poss. (in this former case) may not hire any strangers to aid him, neither may he have his owne ordinary company in armour, nor otherwise be provided with bowes or guns to shoot at the other, as it seemeth. *Cromp. 70.*  
*a. See postea tit. Homicide. cap. 98.*

Also if a man being in his house, doe heare that another will come thither to beat him, he may lawfully assemble his neighbours and friends, &c. to assist and aid him there in the defence of his person. *In defence of his person.*

And yet if he, or any of his company, shall kill the other (or any of the other company) in such defence of himselfe, or his, this seemeth to be felony in all of them which be in the house, and in that action; so as they shall forfeit their goods thereby. See hereof *postea tit. Homicide.* *21. H. 7. 39. Br. Ryots 1. Co. 11. 82. & 5. 91.*

But if a man be threatned, that if he come to such a place, that then hee shall be beaten, in this case he may not assemble any company to goe thither to safeguard his person; for there is no necessitie of his going thither: besides he may have suretie of the peace against such as threatned him. *21. H. 7. 39. Co. 11. 82. & 1. 91.*

And if another shall make any assault upon mee, yet if I may escape with my life, it is not lawfull for me by the law to beat the other who made the assault, *per Markham. Quod tota curia concessit. 2 Hen. 4. fol. 7. Fitz. Bar. 72. Vide hic antea tit. Surety for the peace. cap. 72.*

If there be an attempt made to beat a man, his wife, father, mother, or any of his children (within age) he may lawfully use force to resist it, and may justifie the beating of the other in such case. *In defence of others. 9. E. 4. 28. 16. E. 4. 17.*

Also the servant may justifie to beat another in the defence of his master. *21 H. 7. Br. Trn's 217. hic cap. 72. 39. a.*

But yet by the opinion of *Eliot. 12. H. 8. fol. 2. b.* it is not lawfull forcibly to touch the person of a man, except that there be so great perill that another is like to perish if he have not helpe. And there I may beat one man (saith he) to save the life of another: so that where the life of another is in danger, there any man (though a stranger) may lawfully resist it, and that with force and beating of the other, *vide hic. cap. 72.*

Also a man may justifie to beate another in defence of the possession of his goods. *In defence of my his goods.*



Cr. 65. 69.  
Cro 91.

his goods. And if another hath taken away my goods, I may take them againe from him with force. But a man cannot justifie the wounding of another in defence of his goods; and this was the opinion of *Wray* chiefe Justice, *An. 25. El.*

Also if there be an attempt made to disseise me of my land, or to disturbe me of my high-way, or to turne an ancient water-course from my mill, I may lawfully use force to resist it. *Vid. tit. Suretie for the Peace. Cap. 7. 2.*

Dyer 327.  
Crom. 68.

A Keeper doth enter and chase upon my land, pretending this to be within his purview, where it is not, If I command my servants to beat him off my ground, this seemeth Justifiable in the defence of my possession, against such unlawfull claime. *Tamen quare.*

*Where forcible detainer of possession is lawfull. CAP. 79.*

8. H. 6. c. 9,  
31 Pl. 11.  
P. Force 4.

**T**He Statute of 8. H. 6. concludeth thus, Provided that such as keepe their possession by force, after that they, or their ancestors, or they whose estate they have in such lands, &c. have continued their possession in the same three yeares, or more, shall not be indammaged by force of that Statute.

And by force of this statute and proviso, every heire, and every feoffee, may justifie to keepe their houses and possessions by force, in case that themselves, or their ancestors, or their feoffors, or they whose estate they have, have beene in peaceable possession thereof by the space of three yeares, or more. *Cro. 187.*

22. H. 6. 6.  
18. b.  
Br. Force 6.  
22 & 29,  
See the stat.  
31. EL 11.

Yet this proviso must (as it seemeth) be thus construed, *sc.* that where a man is seised (of a lawfull estate or poss.) of an house, or lands, and hee or his ancestors, or they whose estate he hath therein, have continued the possession of the same peaceably by the space of three whole yeares together without interruption, (and his estate not ended) there he may hold and keepe such poss. with force, against all others: yea it seemeth if hee shall hire strangers to aid him, to keepe such possession, or shall have his company in armour, he is not punishable by these Statutes: but he may not resist the Justices of peace that shall come to view this.

P. R. 37.

And if he shall be indited for such his forcible holding (after three yeares such quiet possession) he may pleade such his lawfull and peaceable possession by the space of three yeares next before such indictment, and thereby hee shall avoid both the imprisonment and fine, and also shall debarre the other party of his restitution. Neither may the Justices of Peace remove him from his possession, though it bee found by the Inquisition taken before them that hee held that house or land by force, after

after three yeares lawfull and peaceable possession, as aforesaid.

But here it seemeth that these foure diversities are to be observed :

First, where the party in possession did enter peaceably, and where forcibly : for if a man enter forcibly, and after continueth his possession peaceably by the space of three yeares without interruption, yet ( it seemeth ) he shall not be aided by these statutes. 6 & 7. E. 6.  
21 H. 6. 8.  
Lamb. 65.  
Br. Repts. 12.

Secondly, where the party in possession hath continued his three yeares possession peaceably, and where by force. Br. Forc. 23  
& 29.

For if after a lawfull and peaceable entry, a man shall continue or hold his possession by force, this is a forcible holding or detainer, and punishable by the Stat. of 8. H. 6. And three yeares of such possession shall not aid him, as it seemeth.

Thirdly, where the party in possession, is in by right, and of a lawfull estate, and where by wrong. And therefore if a disseisor (or other person that commeth in by a wrongfull and unlawfull title) hath continued such his possession peaceably by the space of three yeares, without interruption, It seemeth he shall not be aided by either of these Statutes of 8. H. 6. or 31. El. 21, H. 6. 18.  
b.  
Fi. Entry 20  
Br. Forc. 6.  
Vide 23 H.  
8. pag seq.

For if a disseisor hath continued his possession forcibly by the space of 20 yeares together, yet he may be indited upon the statute of 8. H. 6. before a Justice of peace, of the forcible detaining of the same, and the same being found, the said Just. of peace is to reseise the same, and to award restitution to the party disseised, or so put out. 14 H. 7. 18.  
Br. Forc. 10.

Fourthly, where the party hath continued such his possession three yeares without interruption, and where his possess. hath been interrupted or discontinued.

For if a man hath bin in peaceable possession of land, &c. by the space of three yeares, and above, by a good title, and then is disseised and expelled by force, and the disseisee re-entreteth peaceably or the disseisor is therefore indicted upon the statute of 8. H. 6. and the disseisee is thereupon restored, and is in possession accordingly : yet in these cases the disseisee cannot justifie the detainer of the possession of those lands by force; because his possession was once interrupted : but after, (such interruption and re-entry, or restitution) if he shall continue a peaceable possess. againe for three yeares together, then it seemeth he may justifie the detainer of the possession thereof by force, by vertue of the proviso in the Stat. of 8. H. 6.

If a disseisor hath continued his possession peaceably 3 yeares, and after the disseisee doth re-enter, or doth make his claime so neere as hee dareth, and then the disseisor re-enters againe, or continueth his possession 13. H. 8.  
Br. Forc. 12.

Lit. 429.

sion (after such claime) here the disseisor cannot justifie to hold the same with force, for by the re-entry or claime of the Disseisee, the first disseisin and possession of the disseisor was determined, and the disseisor is in of a new disseisin.

Dyer 141.

Also if he that hath been a lawfull possessor of lands by the space of twenty yeares together, be once cleerely and wholly removed from the possession of the same land, he cannot come with force, or multitude, to put himselfe in possession thereof againe, and to detaine the same with force, because his possession was once interrupted: and if he be indicted (upon the statute of 8.H.6.) for such forcible entry, he shall not be releevd (touching the restitution) by the stat. 31.El. for that he had not the occupation of the said lands, nor had been in quiet possession thereof by the space of three yeares together, next before the day of such indictment found,

1 Action  
upon the  
statute of  
8.H.6.

*How many severall remedies the partie hath, which forcibly and actually is either put out, or kept out of the possession of his houses or lands, &c. contrary to these statutes. CAP. 80.*

4.H.4. ca.8.

1.R.2. ca.9.

8.H.6. ca.9.

P.2.

F.N.B.348.

c.c. &amp; 240 a.

Co.10.115.

P.R.39.

9.H.6.19.

Fitz. 248 b.

15.H.7.17.

**F**irst, the party so grieved (having an estate for life, in taile, or fee) may have his assise, or action of trespassse of forcible entry upon the stat. of 8.H.6. against such disseisor: and therein if the defendant be attainted of force, he shall fine to the King, and also answer to the plaintife his treble damages, and treble costs of suit, and also the plaintife shall thereupon have a Writ of Restitution to restore him to his former estate, Co.L.257.

P.R.39.

9.H.6.19.

Fitz. 248 b.

15.H.7.17.

But (this action being the suit of the party, and onely for the right) this remedy (by action) is onely where the entrie of the defendant was not lawfull: for if a man entreth with force, where his entry is lawfull; as if the Disseisee shall enter upon the disseisor with force, he shall not be punished by way of action: but yet he may be indicted upon the statute and upon such indictment found, the party put out (sc. the disseisor) shall be restored; for the indictment is for the force, and for the King. And here the offender, sc. the disseisee, shall make fine to the King, although his right be never so good. Br. forc. 11.15.H.7.17.

Br. Forc. 29.

&amp; 18.

2 Writ up-

on the stat.

of Northampton

Lamb. 173.

2 Also the party so grieved, if he will lose the benefit of his treble damages and costs, he may be ayded, and have the assistance of the Justices of Peace, and that after divers sorts: First, he may purchase a Writ out of the Chancery (directed to the Sherife onely, or to the Sherife and Iustices of Peace, and to every of them) for to remove the force; and this is upon the statute of Northampton, 2.E.3.cap.3. the forme of which Writ you may see F.N.B. 249.f.

But



But upon this Writ the Justice of Peace is to proceed onely as a minister, and is to certifie his doings herein: and that Justice of peace to whom the writ shall be delivered, ought for to execute it, *sc.* he may remove the force; but here he may not put the party in possession againe, who was put out. *Lamb. 176. Crom 74. 162.*

For the manner of the Justices proceedings herein, see in the other title of *Forcible Entry* before *cap. 22.*

3 Also the party grieved, may at the generall Sessions of the peace within the same County, preferre his bill of indictment, upon the statute of 8. H. 6. for such forcible entry, or detainer; which being found there, the complainant shall be restored to his possession by a Writ of restitution, granted out of the same Court to the Sheriffe. *3 Indictment in Sessions. Dyer 187. Crom. 165.*

4 Also the party so grieved, for a more speedy remedy, may complaine to any one or more Justices of peace of the same Countie, of the said force; and thereupon the said Justice of peace may, *ex officio*, and without any writ, either doe execution of the statute of Northampton, as aforesaid: or else the said Justice of peace upon such complaint, must goe to the place where such force is, to see it, and to remove the force, and to arrest and commit the offenders, and shall also keepe a speciall Sessions to inquire of the said force: and if upon such inquiry such force shall be found, then the said Justice shall restore the party grieved to his possession againe; and here no other Justice of peace can grant a *Superfedeas* to stay the same restitution. *4. By the Just. out of Sessions. Remedium plus Festinum.*

See more hereof before in the other title of *Forcible Entry*.

Also the party grieved may remove such indictment, found either at such generall or speciall Sessions, by a *Certiorari* into the Kings Bench, and the Judges of that Court may award a writ of restitution, to the Sheriffe of the County, to restore possession to the party. See here *cap. 22.*

Now when the Justice of Peace shall make such inquiry, he shall direct Enquiry. his Precept or Warrant to the Sheriffe, commanding him to cause to come before the said Justice of P. at some good Town there neer, 24 sufficient and indifferent persons dwelling neere to the said lands or tenements (wherof every one shall have in freehold lands or tenements 40 s. by the yeer at the least) to enquire upon their oaths of such force, &c. See before in the other title of *Forcible Entry*.

Vpon default of appearance of those Jurors, the Justice of Peace may award an *Alias*, and after that *Pluries infinite* till they come; but so that at the day of the second Precept or Writ, the Sheriffe must return 40 shillings, in issues, upon every one of them, and at the third Writ five pound, and at every day after the double. *8. H. 6. c. 9. Lamb. 168.*

And although any of such Jurors shall not have 40 s. freehold land *per annum*, yet their presentment of such force, is good for the King, so as the offenders. *10. H. 6. c. 155.*

offendors shall fine therefore to the King : but whether the party shall have restitution upon such a presentment, it being pleaded or shewed at the time of the restitution to bee made, seemeth a doubt. See here, *cap. 84.*

*Lamb. 156.* If the Sheriffe shall returne smaller issues upon the Enquirors than the statute doth appoint, yet the party indicted shall not impeach the enquirie therefore.

Neither is it cause to impeach the enquirie, though the Justice of P. doe not goe to see the place where the force is. *Marrow.*

And it is convenient, upon such enquirie, that the evidence be given openly to the Jury, to the intent it may appeare to the Justice of Peace, or Court, whether there shall be reasonable cause to stay restitution, or no, after the indictment found. See *Dyer. 122.*

*Of restitution to be made to the party put out. CAP. 81.*

Restitution  
8. H. 6. *cap. 9*

**I** Will here shortly recite the words of the Statute, which for this businesse of restitution will give the better light.

And if upon such enquirie, it be found before the said Justice, that any have done contrary to this statute (*viz.* have entred, or held with force) the said Justice of Peace, &c. shall reseiſe the said lands or tenements so entred upon, or holden, and put the party so put out, in full possession of the same lands and tenements so entred or holden, as before.

*P. R. 35.*

Here we see that after such forcible entry, or holding, so found by enquiry, the said Justice of peace, &c. shall reseiſe the said lands or tenements, and shall remove the force (*sc.* all such offenders as shall be found in the house, or upon the lands, that either entred or held with force) and upon the prayer of the party so put out, the said Justice of peace shall restore him to his possession againe.

And herein the Justice of peace needeth not to stay, or stand upon the right and title of either of the parties. See hereof a little after.

But no restitution shall be made, but where the forcible entrie, or detainer is first found by inquisition. *Br. forc. 27.*

Indictment  
the forme.  
*Crom. 166.*

Concerning this Inquisition or indictment, the Justices of peace shall doe well to peruse and regard the same, to see if it be sufficient; for the Justices of peace ought not to award restitution, where the indictment shall appeare to them to be any way insufficient in the Law, either in matter or forme,

*Lamb 156.*  
*257.*

**I** First therefore to have restitution, the putting out (by expresse words) must be in the Indictment, and found by the inquisition: for another

ther man may enter upon me, and yet not put me out, and then there needeth no restitution to be made by the Justices.

And this putting out, is to be understood onely of house or land, and not of a rent common, advowson, and such like, into which an actuall Entry cannot be made: and therefore none shall have restitution but such onely as are put out of House or Land. See *antea sub hoc tit.*

2 Also the Indictment ought to expresse the quality of the thing entred upon, &c. *sc.* whether it be a Messuage, Cottage, Meadow, Pasture, Wood, or Land arable: for if the Indictment be, *quod manu forti intraverunt in tenement.* &c. it is void for the incertainty, because the word *tenementum* may extend to either of them. Lamb 481.  
Br Force 13

3 Also the Indictment must have these words, *sc. ad huc extra tenement,* otherwise the party shall have no restitution; and yet these words be not in the Stat. but without these words in the Indictment, it may be supposed and thought that he which put mee out, hath left the possession again, or that I have gotten it again; and then the restitution is needlesse. 14 H. 6. 16.  
Br Force 13

So as in every such Indictment, these words are materiall, *sc. expulerunt & adhuc extra tenent*; and for lack of either of these words, no restitution shall be made or awarded.

4 Also one of these two words *Manu forti*, or *cum multitudine*, seeme to be materiall in the Indictment; unlesse they be employed by reciting the Statute of 8 Hen. 6. and concluding *contra form' stat. pradiet.* or by some other words in the Indictment. See the Presidents herein. Lamb. 145.

For the forme to be used in these Indictments, see more *postea tit. Indict.*

If a man shall be restored upon an insufficient Indictment taken before the Justices of Peace, and this be removed into the Kings Bench, the Court there will cause the party to be restored, that before was put out by the Justices of Peace. Cromp 162.

5 Also if error or insufficiency be in the Indictment, taken before Justices of Peace, and yet a precept or writ of restitution is awarded by them, any two of those Justices of Peace which were present at the taking of the said Indictment, upon the prayer of the party, may (at another Sessions, or out of the Sessions) grant and award a *Superfedeas* to the Sheriffe to stay the same restitution, if the Sheriffe had not made restitution before the *Superfedeas* came to his hands. Cromp. 165.  
& 106. b.

But no other Justice of Peace (besides those which were present at the taking and finding of the said Indictment) can grant a *Superfedeas*, if the Indictment were found at a speciall Sessions; And if it were found at the Quarter Sessions, yet the *Superfedeas* shall be granted under the Teste of one of those Justices only which were present at the finding of the force, *ibidem.* Dyer 189.



Cromp. 165

A man is indicted that he Entred with force, and held with force, and upon the Traverse, it is found that he entred with force, but not that he held with force, yet this Indictment seemeth good enough, and the party shall be restored.

Ibid.

So two are indicted of a Forcible Entry and Detainer, and upon the Traverse, it is found that the one entred with force, and the other held or detained with force, yet the party shall be restored. *Br. Force 15.*

severall  
Indict-  
ments.

If it be found by one Enquest that *A.* put me out by force, and by another Enquest, that I did put out *A.* by force, either of us may pray to have restitution against the other: but he that is first restored is in the worst case; for the other may have restitution afterwards, and then he that had restitution first is without remedy, by the hands of the Justice of Peace; saving that he may re-enter, if he can, peaceably, or have his Action.

Cromp. 166

Br. Force 36

If it be found by one Enquest, that *A.* put me out by force, and by another Enquest taken at the same Sessions, that *B.* did put me out by force, I may choose upon whether of these Indictments I will be restored: and if I have Restitution against *A.* and this be returned, I cannot have Restitution upon the other. But if (upon the Writ of Restitution) it be not returned that I have Restitution, then I may afterward have Restitution against *B.* upon the other verdict, if *B.* hath re-entred upon the first Restitution made to me. *Marrow.*

Cromp. 166

*A.* is disseised, or put out with force by *B.* and after *B.* is put out with force by *C.* & all this is found by one and the same inquisition; here *B.* may have restitution against *C.* (for *B.* hath more right to the possession than *C.*) and then may *A.* have Restitution against *B.* But upon this inquisition if *A.* have Restitution first, then *B.* shall not have any Restitution: otherwise if these had bin found by severall inquisitions.

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*Who shall award and make this Restitution. C A P. 82.*

**A**fter the force is found by the Enquest, the Just. of Peace (before whom the said force shall be so found) may himself put the party in possession again: Or he may make his precept (under his own *tesse* alone) to the Sheriff to do it. *Dyer 187.*

The forme of the Precept to the Sheriff to make Restitution. See *postea*. *tit. Presidents. c. 129.*

Dyer 187.

But no other Justice of Peace hath any authority (by the Statutes) to grant or award Restitution, but only he or they, before whom the force was found by inquisition. Nay, the Justice of *Oyer* and *Terminer*, nor the Justice.

Justice of Gaol-delivery cannot grant Restitution, nor the Justices of peace at their generall Sessions of the Peace, cannot grant this Restitution, except the Indictment were found before them. And yet by some opinions, if it shall happen that the Justice of Peace, before whom such an Indictment shall be found, before restitution made, shall happen to die or to be removed, then may the residue of the Justices of Peace at their generall Sessions of the Peace, grant a Writ of Restitution. 4 & 5 P. & M. Dalif. Co. 11. 59. 65.

Also the Justices of the Kings Bench (in regard of their Supream authority in all cases of the Crown) either upon Certificate, or delivery (to them made by the Justice of Peace before whom such force was found) of the presentment of such force; or if the said presentment, or indictment shall be removed before them by *Certiorari*, in both these cases the Justices of the Kings Bench may award restitution. See *antea*, in the other title of *Forcible Entry*, *Fitz. Entry* 36. & *Cro.* 159. Co. 9. 118. Co. 11. 65. 4 H 7. 18.

But neither the Justice of the Kings Bench, nor any other (besides him or them that made the inquiry) can personally restore the party, but only by way of precept to the Sheriff. Lamb. 161.

The Sheriff (if need be) may take the power of the County, to execute the precept of the Justice of Peace herein.

And if the Sheriff upon such a Precept, or upon a Writ of Restitution, (from the Sessions, &c.) shall Return that he cannot make Restitution, for resistance, &c. he shall be amerced for making such a Return, because in such case he might have taken the power of the County to assist him therein. See the like case, *Fitz. Execution* 147. Lamb. 160.

Note that the same Justices or Justice of Peace, before whom the force was found by Inquisition, and which have granted his or their warrant to the Sheriff to make Restitution, may afterwards grant his or their *Superfedeas* to the Sheriff, to stay the same Restitution: But no other Justice or Justices of Peace, hath or have authority to grant any *Superfedeas* in such case, &c. See *Dyer* 123. & 187. *hic cap.* 81.

*To whom Restitution shall be made. CAP. 83.*

**T**His Restitution ought to be made to him that was put out, and to none other; for so are the words of the Statute.

Therefore if the Father be put out by force, and dieth, his heire shall not have restitution: yet here the Justices may imprison, and fine the offenders, for by such forcible Entry they have broken the Peace. See *antea*, in the other title of *Forcible Entry*. P. R. 38.

Lund. 156.

Also, if after the death of the Father, a stranger abateth, or entreth into his Land by force, before the heire hath gotten actuall possession in deed, the heire shall not have restitution, because hee had but a possession in Law descended upon him.

Fitz 284. b.

The Disseisee doth put the Disseisor out with force, the Disseisor shall be restored; for the right or title is not commonly disputable, or materiall; but by the words of the Statute, he that is in such sort, (*sc.* forcibly) put out, shall be restored.

Dyer 122.

Yet it seemeth in this case, that upon Traverse tendred by the Disseisee, and his right appearing, the Justice of Peace may stay restitution. See hereof. *postea sub hoc tit.*

Br. Force 6.

Also if the Disseisor be restored again, yet the disseisee may after re-enter peaceably, or have his assise. *Fitz Entre 20.*

Crompt. 163.

But if the Disseisee shall enter peaceably upon the Disseisor, and so they both shall abide and continue there together for divers days, and after the Disseisee doth put out the Disseisor with force, and is thereof indicted, here it seemeth the Disseisor shall not be restored; for the Disseisors possession was avoided in quiet manner at the first Entry of the Disseisee, and so the Disseisor had no possession, in the eye of Law when hee was put out.

Crompt. 162.  
& 164.

If the disseisee shall enter peaceably, the Disseisor and his Family being abroad, and after the Disseisee shall keep his possession with force, the Disseisor shall not be restored, by reason of the eigne title of the Disseisee, and for that hee entred peaceably. See *antea* in the other title of *Forcible Entry*.

But here the Disseisee shall be imprisoned and fined, for keeping his possession with force; for forcible keeping or detaining, is as well prohibited as Forcible Entry.

Crompt. 164.

Fitz  
Assise 418.

And here note, that the being of a mans wife, children, or servants, in the House, or upon the Land, doe preserve his possession; but his cattell being upon the ground, &c. do not preserve his possession.

Lit 140.

Park 45.

Also when two are in possession of an house, &c. and the one claimeth by one title, and the other by another title, here the Law shall adjudge him to be in possession, who hath the best right to the possession: so that if *A* shall wrongfully enter upon *B*, and they both shall continue in the house, and after *B*. shall put out *A*. with force; *A*. shall not be restored, for *A*. never gained any possession by his Entry.

Fitz 249. d.

Two Joyntenants, or Tenants in Common, and one of them doth forcibly put out the other out of his possession, he that is so expelled, may have an action of Trespas of Forcible Entry against his companion upon the Statute 8 Hen. 6. and thereupon he shall have a Writ of Restitution to restore



store him to his former estate: but what the Justice of Peace can do herein, *P.R. 39. quere*, for that his Entry and Possession is lawfull through the whole Land, in respect of his own moiety and estate. See 8 E. 4. fol. 8.

Two Joyntenants be put out by force, and one of them only sueth to have *Lamb. 158.* restitution, restitution shall be made unto him.

Whether a Copiholder, Lessee for yeers, or Tenant at will, shall have restitution; see before, *cap. 77.*

If Lessee for yeers be put out of his Term by force, and die, though after *P.R. 38.* his death this force be found by Inquisition, taken by a Justice of Peace, yet his Executors shal not be restored to that Land (by the Justice) for that they are not the same person that was put out.

*What causes there may be for staying the Justice of Peace from granting Restitution. CAP. 84.*

**A**Lthough the party thus to be indicted for a Force, shall not be heard *Lamb. 158.* nor suffered to give his title in evidence, to excuse himself of his Forcible Entry, or Detainer, to save his fine due to the King for such force (which fine he shall make though his right be never so good;) yet to the restitution (which the Complainant shall demand, if the force be found) the defendant shall be heard to disprove the title of the complainant, or what hee can say: otherwise for the stay of restitution, *Quere*, and see before in the other title of *Forcible Entry.* *Dyer 112.*

Now the Defendant (or party indicted) for the stay of restitution, may, at the time of the restitution to be made, plead or allege any of these things following:

- 1 His quiet possession by three yeers together.
- 2 He may deliver to the Justice of Peace, or Court, a *Certiorari*, and this is a *Superfedeas* to them. See the Statute 21 Jac. cap. 8. *hic postea.*
- 3 He may tender his Traverse: but M. *Lambert* seemeth to doubt whether the party may be admitted to his Traverse before the same Justice of Peace. And he thinketh it safer for the Justice to make Restitution notwithstanding the offer of Travers, or rather he wisheth the Justice to deliver, or certifie the Presentment into the Kings Bench, and so to refer the further proceeding to them, &c. See *hic postea.* *Lamb. 162.*
- 4 He may plead the insufficiency of the Indictment. See *paulo antea* c. 81
- 5 He may plead the insufficiency of any of the Jurors, *sc.* for not having forty shillings freehold Land *per annum*: and in this case Master *Marrow* is of opinion, that the party shall have no restitution: Yet M. *Lambert* and M. *Crompton* seem to be of the contrary opinion. *Lamb. 155. Crompt. 165. Ideo quere.*

And it seemeth (by the opinion of M. Lambert) that the Justice of Peace ought not to stay restitution, save onely, either by alledging three years quiet possession, or by removing the Record and presentment into the Kings Bench by a *Certiorari*, Lamb. 156.

**Th. ccyers** For the first, there shall be no restitution awarded (upon any Indictment of Forcible Entry, or holding with force) where the party indicted hath bin in quiet possession by the space of three whole years together, next before the day of such Indictment found, if his estate be not ended; and this the party indicted may alledge to stay the restitution, and the restitution upon this shall be stayed by the Justice of Peace, untill it be tried, if the other party will deny or traverse the same. And if the same allegation be tried and found against the party indicted, then shall he pay such costs and damages to the other party, as shall be assessed by the Justices before whom the same shall be tried; the said costs and damages to be recovered and levied notwithstanding by the course of the Common Law. 31 Eliz. c. 11.

**Certiorari.** Also if a man who hath made a Forcible Entry or Detainer be in doubt that he shall be indicted thereof before the Justice of Peace (upon the Statute of 8 H. 6.) and that thereupon restitution will be awarded against him, he may have a Writ of *Certiorari* out of the Kings Bench ready, and when the Bill of Indictment is found, he may presently deliver it to the Just. of P. or Court; And this is a *Superfedeas* to them for to stay the Restitution; for that upon this Writ, the said Indictment shall be removed from them into the Kings Bench.

And although the Indictment be found after the *teste* of the *Certiorari*, it is not materiall, for they be both the Kings Courts, &c.

**6 H. 7. 16.** But if a *Certiorari* commeth to the Justices to remove an Indictment of Forcible Entry taken before the Justice of Peace in the Country, and the party will not sue to remove it, but suffereth it to lie stil, the Justice of Peace may proceed to grant restitution, notwithstanding the Writ, as *Hobert* the K. Attourney said in 6 H. 7. But *Keble* held opinion against him; and it seemeth rather, that the Justice of Peace ought *ex officio*, to send the Indictment away, because they are commanded so by the Writ; and this Writ is a *Superfedeas* of it self to the Justices of Peace to stay their proceedings; and if they shall proceed after, it is erroneous. Br. Judges 17.

**Lamb. 498.** After Restitution made by the Justice of Peace, if the other party doth remove the Indictment by a *Certiorari*, of a more eigne date than is the Indictment, the Justice of the Kings Bench may award Restitution, back again: for upon the matter the Just. of Peace had no power to make Restitution, for that the *Certiorari* hath relation from the date thereof.

**Cromp. 162.** After Restitution granted from the Sessions, and delivered to the Sheriff, the

**Ibid.**

the other part having a *Certiorari*, and delivered it also unto the Sheriff after the Sessions, the Sheriff shall not surcease thereupon (for he hath no authority to allow thereof.) But if the *Certiorari* were delivered to any Justice of Peace, he may thereupon grant a *Superfedeas* to the Sheriff. And if Restitution were made by the Sheriff before the said *Superfedeas* came to his hands, then the other party shall have Restitution back again, in the Kings Bench upon the Indictment removed thither.

But for that Bills of Indictment of Forcible Entry, or Riots, being found before the Justice of Peace, are oftentimes removed by Writs of *Certiorari* out of the Chancery or Kings Bench, by the means of the person indicted; by means whereof such offenders for the most part escape unprosecuted and unpunished; (for that the party grieved, will not undergo the travell or charge, &c.) it is therefore enacted (by the Statute made 21 Jac. Regis, c. 8.) that all such Writs of *Certiorari*, shall now be delivered at some Quarter Sessions of the Peace, in open Court; and that the parties indicted, before the allowance of such *Certiorari*, shall become bound unto such person, which shall prosecute such Bill of Indictment against them, in the sum of 10 pound, with such sufficient Sureties, as the Justice of Peace, at their said Quarter Sessions of the Peace shall think fit, with condition, to pay unto the said prosecutors of such Bill of Indictment (within one moneth after the conviction of such parties indicted) such costs and damages, as the said Justice of Peace in the said Sessions of the Peace shall assess or allow. And in default thereof it shall be lawfull for the said Justices to proceed to triall of such Indictments, any such Writ of *Certiorari*, to remove the same Indictment, notwithstanding.

The tender of a Traverse (to an Indictment of Forcible Entry; upon the Traverse Statute of 8 H. 6.) is no *Superfedeas* but in discretion; so as the Justices of Peace, or Court (notwithstanding the Traverse tendred) may grant, or may stay the restitution at their discretion, according as the truth of the right or Title shall appear to them and so is the use of the Kings Bench. Dyer 122. pl. 34.

Or else the Just. of Peace (before whom the Indictment was found) may after Traverse tendred, certifie or deliver the Indictment into the Kings Bench, or to the Quarter Sessions, and so refer the further proceedings therein to them.

But if the party indicted shall tender a Traverse presently, whereupon Restitution is stayed, and after he shall not pursue his Traverse with effect (but discontinueth it) and after doth tender another Traverse upon Restitution prayed at another time; the Justices of Peace, or Court, shall do well to proceed to grant Restitution, notwithstanding such Traverse tendred.

And:



Crompt. 166.

And it is the course of the Kings Bench, that hee that tendreth the Traverse there (upon such an Indictment) shall beare all the charges of the Triall, and not the King, nor he at whose suit the Indictment was found: And the same reason seemeth upon an Indictment traversed before Justices of Peace.

But upon a Forcible Entry found, and a Traverse tendred, if the Justices of Peace will try the Traverse, it seemeth they ought to cause a new Jury to be returned (by the Sheriff) before them, to try the same Traverse; The which may be done the next day, but not the same day. *Crompt. 150. 152. Vide hic c. 133.*

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Riots. CAP. 85.

**I**T may easily and manifestly appeare to all such as have bin conversant in our Chronicles, how pernicious and dangerous to this Kingdome, unlawfull assemblies have bin in all precedent ages, yea, such as at the first were very small, and began upon very small occasion, yet not being repressed in time, grew to such greatness and height, that they afterwards put in hazard the State and government of this Land: And therefore it is behovefull and good wisdom for all Justices of Peace to endeavour by all good means to quench the beginnings & first sparks of such assemblies, as knowing, that for want of timely restraint, they may soon grow to the like danger again.

Now for the better suppressing of such unlawfull assemblies, and partly for the better inabling of the Justices of Peace therein, there were three Statutes devised and provided specially by the wisdom of the Realme, and are remaining yet in force, that is to say, the Statute of 13 H. 4. 7. 2 H. 5. 8. and 19 H. 7. 13.

53 H. 4. 6. 7. The Statute of 13 H. 4. authorising, nay, upon a great penalty enjoyn-  
ing the Justices of Peace (together with the Sheriff) to arrest, remove, and  
punish the offenders.

5 H. 5. 8. But for that the aforesaid Statute gave no remedy to the party grieved, if  
the Justice of Peace or Sheriff should make default, as also for the better  
stirring up of the Justices in this businesse, the Statute of 2 H. 5. was made,  
authorising the Lord Chancellour of *England* (at the instance of the party  
grieved) to grant a Commission to enquire of the defaults of the two next  
Justices of Peace and Sheriff, in not executing of the aforesaid Statute of  
13 H. 4. And withall providing how the charges of the Justices, spent a-  
bout the suppressing, and enquiry of such Riots, should be born; and also

limiting what punishment as well the offenders attainted of such Riots, as also all such as should not be ready to assist and aid the said Justice to re-  
presse such Rioters, should suffer.

And lastly, for that the two former Statutes did not expresse of what sufficiency the Jurors impannelled to inquire of Riots, should be; nor what issues they should lose, if they appeared not; nor any certain punishment was inflicted upon the maintainers or imbracers of such Jurors: Therefore *19 H. 7. 13.* the said Statute of *19 H. 7.* was made. But so much of these things as concern the Justices of Peace, do appear more particularly here before: And therefore now I will proceed in this businesse.

*First, what shall be said to be a Riot, Rout, or unlawfull  
Assembly, within the meaning of these  
Statutes.*

**V**Hen three persons or more, shall come or assemble themselves together, to the intent to do any unlawfull Act, with force or violence, against the person of another, his possessions, or goods, as to kill, beat, or otherwise to hurt, or to imprison a man; to pull down a house, wall, pale, hedge, or ditch; wrongfully to enter upon, or into another mans possession, house, or land, &c. or to cut or take away corn, grass, wood, or other goods wrongfully; or to hunt unlawfully in any Park or Warren, or to doe any other unlawfull act (with force or violence) against the Peace or to the manifest terrour of the people; if they onely meet to such a purpose or intent, although they shall after depart of their own accord, without doing any thing, yet this is an unlawfull assembly. *Br. Riots. Cramp. 68. P. R. 25. Unlawfull assembly. Rout. Br. Riots. 4. 5. 1 amb 179.*

If after their first meeting, they shall ride, go, or move forward toward the execution of any such act (whether they put their intended purpose in execution, or not) this is a Rout. *1816 Br. 4.*

And if they do execute any such thing in deed, then it is a Riot. *Riot. Br. 4. 5.*

And yet by the opinion of some, a Rout is onely, where such a company (of three or more) are so assembled for their own common or proper quarrell (and not in the quarrell of any other person.) As where the inhabitants of a Town do assemble together to pull down a house, wall, pale, ditch or other inclosure, pretending to have title of Common, or a way there; or to beat a man that hath done them some publike offence. But yet the word *Rout*, seemeth to have a more large and ample meaning, as appeareth by the Statute of *18 Ed. 3. Stat. 1.* speaking of Routs that are brought in the presence of the Justices: and the Statute of *7 R. 2. cap. 6.* treating of riding in great Routs.

Master *Finch* describeth them shortly thus, *Fi. libro 2.*

An unlawfull assembly is when above the number of two shall assemble to do an unlawfull act.

A Rout is when they set forward to do it.

A Riot is when they do it indeed.

But at the Common Law (before the making of these Statutes) these facts and unlawfull assemblies committed or done, were of none other qualities in their natures, than other common trespasses; although sometimes by the discretion of the Justices, a greater fine was assessed in such cases, than was for other common trespasses.

Now in Riots, Routs, and unlawfull assemblies, these foure circumstances are to be considered:

First, the number of the persons assembled.

Secondly, the intent and purpose of their meeting.

Thirdly, the lawfulness or unlawfulness of the act.

Fourthly, the manner and circumstance of doing it.

The number.

For the number, there must necessarily be three persons at the least, so gathered together, or else it can be no Riot, Rout, or unlawfull assembly, within the meaning of these Statutes.

By the Statute 1 *Mary* 12. & 1 *Eliz.* 16. if above the number of two and under 12 assembled together, had gone about unlawfully to kill any subject, or to cast open any Inclosure, destroy any Deer, Conies, Dove-house, or fish, to pull down Houses, burn stacks of Corn, or abate Rents, or prices of Corn or Victuals, if they had not departed upon Proclamation, but should after attempt to do any of those things, they were to be imprisoned by the space of one year, without bail. *P. 20.*

*P. 16 17.*

By the same Statute of 1 *M.* 12. and 1 *El.* 16. if twelve persons, or more, assembled together, should have intended, or gone about to change Laws, or to have done any of the former things, if they had not departed within one houre after Proclamation, it had bin felony in them all.

*P. 31.*

And by the same Statute, if the number had bin 40 or above that had assembled together, to the intent to have done any of the former things contrary to those Statutes, or any other felonious or rebellious act, if they had continued together three houres after Proclamation, it had bin felony; but these two Statutes stand now discontinued.

But an assembly of an hundred persons or more (yea though they be in armour) yet if it be not in *terrorem populi*, and were assembled without any intent to break the peace, it is not prohibited by any of these Statutes, nor unlawfull. See *infra*.

The intent

For the intent: It seemeth it can be no Riot, &c. except there be an intent



tent precedent, to do some unlawfull act, and with violence or force.

And therefore if divers be assembled, and none of them do know to what end or purpose they are met, this can make no Riot or Rout, till the intent be known. Crompt. 6.  
P.R. 25.  
Lamb. 183.  
Crompt. 61.

If the master (intending to make a Riot) taketh with him his ordinary servants, and maketh an affray, or other outrage with them, this is no Riot in the servants, except their master had made them privy to his intent before, but the master onely shall be punished for this. Yet *quare* whether this shall be adjudged, or punished in the master as a Riot.

And in this former case it is not materiall, though the number of his servants that go with him are above his degree, so long as they be his household servants, *Lamb. 184. P.R. 25.*

If divers being lawfully assembled, shall quarrell or fall out upon the sudden, without any such former intent, this is no Riot but a sudden Affray. Crompt. 62.

If divers be at an Ale-house, and without any intention of an Affray, they suddenly fall together by the eares, this is no Riot, but a sudden Affray, because they had no such intention before. Lamb. 184.

If a Jury being together, shall fall out, and fight, this is no Riot, because they were lawfully assembled. Ibid.

Also where there be three or more gathered together, either to execute the Justice of the Law, or for the exercise of valour, and triall of activity, or for the increase of amity or neighbourly friendship, (and not being met with an intent to break or disturbe the peace, or to offer violence or hurt to the person of any) such assemblies be not prohibited by any of these Statutes, nor unlawfull; As if the Sheriffe, Undersheriffe, or Bailiffe, shall take power (what number they shall thinke good) to execute the Kings Proceffe, &c. it is lawfull. So of other Officers. See more hereof *postea* 3 H. 7. 1.  
Br. R. ois 27  
*tit. Posse Comitatus.*

So it is a lawfull assembly which is gathered together to run at Tilt, &c. by the Kings commandement.

So the assembly of people, and their use of harnesse upon *Midsomer* night in *London*, being onely for disport, is lawfull, and though it be with a great assembly of people, and in armour, yet it being neither *in terrarem populi*, nor to do any act with force or violence against the Peace it is lawfull. Br. 1.

Also if divers do assemble and gather together, to drink at an Ale-house, or at a Christmas Dinner, or at a match of shooting, or such lawfull disport; or else to play at Foot-ball, Bucklers, Bear-baitings, Dancings, Bowls, Cards, or Dice, or such like unlawfull Games or Disports, this is neither Riot, Rout, nor unlawfull assembly within these Statutes nor here prohibited; for these meetings usually are not with any intent to offer or doe

violence or hurt to the person, possessions, or goods of any other; neither are they *malum in se*, they are in themselves neither evil, nor unlawfull, nor prohibited by the Common Law, though otherwise some of them are prohibited by Statute, *Vide antea tit. Games unlawfull.*

But if any of the persons assembled together for any the disports above-mentioned (or for the like,) came with any intent or purpose to breake or disturb the peace, or to offer violence or hurt to the person of any, and shall make an affray, or do other outrage, this seemeth to be a Riot, in so many as came with any such unlawfull intent or purpose.

Lamb. 184.  
P. R. 25.

And if any of the persons assembled together (to drinke, or play) at an Ale-house, or for any the disports above-mentioned, or the like shall fall out suddenly (without any former intention of an Affray) and in that their falling out they shall betake themselves to sundry parts, and shall make an affray, it seemeth (by the opinions of some) that this shall be adjudged a Riot in so many of both sides, as shall be parties to that affray or quarrell: but *quære* hereof, for that it was without any such intent before their said assembly, and done onely upon the sudden, and upon a sudden occasion happening after their said meeting; and again, their said assembly was at the first lawfull, or at least not prohibited by any of these Statutes, nor yet by the common Law. *Co. II. 87.*

But otherwise, if by agreement they shall meet againe, and fight afterwards, that maketh it a Riot, as being a new assembly upon the former quarrell, and so their second meeting was upon an intent precedent to do an unlawfull act.

Where a great number shall assemble themselves, or come into a house, and there detaine possession of the house with force (though this be neither a publike fact, or force, done in the open sight of the people; yet) this is a Riot, and the Justices of Peace punishable, if they shall not remove such force, and suppress such Riots. See the case of *Drayton Bassett*, *hic antea tit. Forcible Entry.*

*Concerning the lawfulnessse or unlawfulnessse of the act. CAP. 86.*

Lawfulness  
of the act.

**N**Ote, that the lawfulness, or unlawfulness of the thing done or intended, doth not always excuse or accuse the parties to a Riot, &c. but so, that the manner and circumstances of the act, must also be considered.

For every man may assemble company to aid him in his house, against injury or violence: but if a man be threatned, that if he come to such a place he shall be beaten, in this case if he shall assemble any company to go thither with

with him (though it be to safeguard his person) it seemeth to be within the compasse of these Statutes, and unlawfull. *Br. Riots 1.*

Every man in peaceable manner, may assemble a meet company (and *Cromp. 6.6.* may come) to do any lawfull thing; or to remove or cast down any common nuisances done to them.

Every private man, to whose house or land any nuisances shall be erected, made, or done, may in peaceable manner, assemble a meet company, with necessary tools, and may remove, pull, or cast down such nuisances (and that before any prejudice received thereby) and for that purpose if need be, may also enter into the other mans ground. *Br. Nuisances. 14. & 33.*

A man erects a Weare, Crosse a common River (where people have a common passage with their Boats) and divers did assemble with Spades, crows of Iron, and other things necessary for to remove the said Weare, and made a Trench in his land that did erect the Weare, to turn the water, so as they might the better take up the said Weare; and they did remove the same nuisances, this was holden neither any Forcible Entry, nor yet any Riot. *36 Eliz. Cromp. 66.*

But in the cases aforesaid, if in removing any such nuisances, &c. the persons so assembled shall use any threatening words (as to say they will doe it in spite of the other; or they will do it, though they die for it, or such like words) or shall use any other behaviour, in apparent disturbance of the peace, then it seemeth to be a Riot: and therefore where there is cause to remove any such Nuisances (or to do any like act) it is the safest not to assemble any multitude of people, but onely to send one or two persons, or (if a greater number) yet no more than are needfull; and only with meet tools, to remove, pull, or cast down the same, and that such persons tend their business onely without disturbance of the peace, or threatening speeches.

For the manner of doing a lawfull thing, may make it unlawfull.

Also the manner of doing an unlawfull act by an assembly of people, may be such (and so handled) as that it shall not be punished as a Riot.

As if I shall assemble a meet company to carry away a piece of timber, or other thing (whereto I pretend a right) that cannot be carried without a great number, if the number be not more than are needfull for such purpose, although another man hath better right to the thing so carried away, and that this act be a wrong, and unlawfull, yet is it of it self no Riot, except there be withall threatening words used, or other disturbance of the peace. *Lamb. 182.*



## For the manner and circumstances. CAP. 87.

The manner.

**A**S there must necessarily be three persons at the least, assembled together, to make a Riot, &c. so their being together and their demeanour must be such, as shall or may breed some apparent disturbance of the peace; either by threatening speeches, turbulent gesture, shew of armour, or actuall force or violence, (to the terrour and fearing of the peacabler sort of people, or to the emboldning and stirring up of such as are busie headed, and of evill disposition, by such fact;) or else it can be no Riot, &c. For, as I said before, the manner of doing a lawfull thing, may make it unlawfull, & *e converso*.

Lamb. 182.

P. Armor. 1.

And therefore if divers in one company; going to the Church, Faire, or Market, shall go armed; or one going to the Sessions, or other like assembly, shall go with his servants in harness (to the terror of the people) though he or they have no intent to fight, or to commit any Riot, yet this is a Rout by the manner of his or their going, being needlesse, disordered, and against the Law. See the Statute, 2 Ed. 3. c. 3.

Crom. 64.

But in the former cases, if they had gone in privy Coats of plate, shirts of mail, or the like, to the intent to defend themselves from some adversary; this seemeth not punishable within these Statutes, for that there is nothing openly done *interrorem populi*.

31 Eliz.  
Cromp. 64.

One N.W. together with fourscore persons, came with Spades, Mattocks, Pistols, Swords, and Daggers, in the night, to a piece of ground (where Sir Thom. St. had made a great Weare crosse over the River of Trent, in the County of Nottingham, to the great Nusans of passengers there, &c.) and there they made one or two litle Trenches to let out the water, &c. And though it were lawfull to make the Trenches, and to debruse the Nusans, yet for that they came with such number, and weapons, they were deeply fined in the Star-Chamber, 36 Eliz.

31 &  
32 Eliz.  
Cromp. 64.

Also one Kemp Lord of a Copihold, did enter with twenty persons, and cut his Copiholders Corn with force, for that his Copiholder would not compound with him for his fine; and although the Entry of the Lord was holden lawfull, yet punishable as a Riot in regard of his number and force.

Cromp. 64.

In all cases where three (or more) shall enter into lands, &c. with force (upon the possession of another) where there Entry is lawfull, yet it is a Riot, by reason of number and force; for the Statute of 5 R. 2. prohibiteth the Entry with force, or with multitude of people, although the Entry (be otherwise) lawfull.

What

*What persons may commit a Riot, &c.* CAP. 88.

**I**F a number of women (or children, under the age of discretion doe flock together for their own cause, this is no assembly punishable by these Statutes, unlesse a man of discretion moved them to assemble for the doing of some unlawfull act, as *M. Marrow* held.

Yet certain women that had apparellled themselves in mens apparel, and had pulled down riotously a lawfull inclosure, were worthily punished for the same in the Starchamber as *M. Lamb* reporteth.

*Lamb, 184.1  
Com. 61.*

Also women and children may commit a force, may commit larceny, and may be bound to the peace, as breakers of the peace. *Vide antea tit. Suretie for the Peace, and Forcible Entry, & Doct. & Stud. 147. 148.*

Concerning children, and their punishments in such cases, See *hic cap. 77. & 118.*

Also women covert are holden to be within the Statute of *Mert. c. 6.* for *Co. 3 72 &* ravishment of Wards; and within the Statute of *Westmin. 1 c. 20. de Ma-* 11. 61.  
*lesfactoribus in parcis*: and within the Statute of *8 H. 6.* of Forcible Entry: and within the Statutes of *1 El. cap. 2.* and *23 El.* for Recusancy, although they be not named within any of these Statutes.

Also if a woman covert shall commit any Riot, or doe any trespassse or other wrong, shee is punishable for it; and for a trespasss done by the wife, or for a scandall published by her, the action lyeth against both the husband and wife, *sc.* an action of trespasss, or of the case, shall be brought against the husband and the wife, and there the husband is chargeable to the damages, or fine, because he is a party to the action and judgement, (See *Co. 11 61. b.* *paulo antea tit. Forcible Entry*) but if a woman covert without her husband be indicted of a Trespasss, Riot, or any other wrong, there the wife shall answer, and be party to the judgement only; and in such case the fine set upon the wife shall not be levied upon the husband; yet after the husbands death, it seemeth such damages or fine shall then be levied of the wife her selfe; And as for imprisonment, or other corporall pain, it shall be inflicted upon the wife only, and not upon the husband for his wives act or default.

*22 ass 87.  
43 E. 1 23.  
Br. Imp 100*

And note, that any Subject of this Realme, for any injury done to his person, or done to him in his Lands, or Goods, may pursue, and have the justice of Law, against any other Subject, be hee bond or free, be it a woman or an infant, be they religious persons, or be they persons excommunicate, or out-lawed, or other person whatsoever, without any exception, &c. for the King (by the Statute of *Magna Charta, c. 29.*) saith, *Nulli vende-*

*mus, nulli negabimus, aut differemus justitiam, vel remedium.* Dyer. 104.  
 Lamb. 185. But if a Major and Aldermen, or Bailiff and Burgeses, or the Fellows of any other Society, do assemble in their common quarrell, and make a Riot, or Rout, this shall be punished in their own private naturall persons, and not in the body politick. Brimpr. 95.

### High Treason. CAP. 89.

Glanvil.

**H**igh Treason (called in Law, *Crimen laesa Majestatis*) is a grievous offence, done or attempted against the estate regall, viz. against the King (the head, life, and Ruler of the Common-wealth) in his person, the Queen his Wife, his Children, Realm, or Authority; as,

25 E 3 c. 2.  
 P. 1.

To compassse the death of the King, the Queen his Wife, or of their eldest son and heire, 25 E. 3. c. 2. Fi. 22.

To compassse the death of the Father or Mother of the King, or of any of the Kings Children, although that such compassing be not brought to effect, yet it is Treason, by *Brutton* in his title of *Appeals*, fol. 39. *Stamf.* fol. 1. p.

To compassse the death of an Usurper of the Crown, is Treason, for which the offender may be arraigned in the time of another King, as appeareth, *Br. Treas.* 10.

*Stamf.* 2. b.  
 co 8. 8.  
 Br. 24. 29.

To intend or imagine the death of the King or Queen, though they bring it not to effect, sc. if they shall declare this by an open Act, whereby it may be known, or to utter it by words or letters, is Treason.

To intend, to deprive, depose, or disinherit the King, is high Treason, if it may appear by any open Act; for no Crown can be taken from a Kings head, without losse of his head and Crowne both, sooner or later, as his Majesty hath observed in his *just defence of the Right of Kings*, See *Bri. and Stamf.* 1. p.

So to say that he will be King, after the Kings death, is high Treason See the Duke of *Buckinghams* case, 13 H. 8. fol. 12.

M. *Glanvill* also, and M. *Bratton*, say thus, or to this effect: *Si quis machinatus fuerit, vel aliquid fecerit in mortem Domini Regis, vel ad seditionem Regis, vel exercitus sui, vel consenserit, consiliumne dederit, vel aut illum procuraverit, seu prastiterit, licet id quod in voluntate habuit, non produxerit ad effectum tenetur tamen criminis laesa Majestatis.* See *Glanv. lib. 14. fol. 110.* & *Bratton, lib. 2. Stamf. 1. v. x.*

And so note, that Treason may be committed by imagination, and a resolution to perform or do an act, although it be not brought to effect; as  
 in



in these former cases. This was the case of *Bighan* and *Tereſh*, who were both hanged, onely for that they had a will to kill King *Abashueruſh*, and sought to lay hand on him, *Eſther* 2. 21, 22.

If one that is *non Compos mentis*, doe kill, or attempt to kill the King, it is *Co. 4. 124.* in him high treason; whereas petty treason, homicide, or larceny, shall not be imputed to such a person. *Vide. stat. 33. H. 8. cap. 20.*

One Constable pointed to another, saying to his friends, Behold King *Ed.* (who was then dead) and for those words he had judgement and execution as a traitor, *Dyer* 128. but *Co. 7. 10.* observeth that the words were accompanied with other circumstances, which appeare not in our usuall printed bookes.

Also to deflower the Kings wife, his eldest daughter being unmarried, or *P. 1.* his eldest sonne and heires wife, is high treason. 25. *E. 3. 2.*

So is it, if any man shall deflower any other of the Kings Daughters, yea *P. 1.* or the Nurſes of any of the Kings children, as *M. Britton* writeth, fol. 43. *Stamf. fol. 1. 9.*

To levy warre against the King &c. in this Realm, is high treason: Note that to detaine or hold a Castle, or Fortresse, against the King, is to levy war against the King. See *Br. Treason* 24. 25. *E. 3. cap. 2.*

So to conspire to levy war against the King &c. is high treason.

Also to detaine, keep, or with-hold from, or against the King, any of his Ships, or Ordnance, or maliciously to burne, or destroy any of the Kings ships; or maliciously to barre any Haven within any of the Kings Dominions; all and every of these seeme to be included within these words [To levy war against the King] and so to be high treason. See *Br. Treason* 24. *Stat. 14. Eliz. cap. 1. & quare.*

To sell any armour to the enemy; or to furnish the enemy with weapon or munition, have beene accounted crimes treasonable. *VV. Segar Norroy, of Honor Military and Civill, pag. 14.*

If any person having a charge, shall yeeld the same up unto the enemy, this also is a crime treasonable. *Ibid.*

So all explorators or spies that bewray our secrets, and informe the enemy thereof, are to be accounted traitors. *Ibid.*

To practise with a Governour of another Countrey to invade this Realm, is high treason; although such practice be not put in ure. *Dyer* 298.

So to kill one that is sent in the Kings message, 22. *Aff. Stamf. 1. 1. Br. 13.*

To incounter in fight, and kill such as are assisting to the King in his wars, 21. *E. 3. 23.* or such as come to helpe the King, is high treason. 45. *Ed. 3. 25. Br. Treas. 7. Stamf. 1. 1.*

These two last cases were holden to be high treason, before the statute of 25. *Ed. 3.*

To succour the Kings enemies is treason. *Thorp. 22. Ed. 3. fol. 49.*

P. 1.

To be adherent to the Kings enemies (aiding them, or giving them comfort, in his Realme, or elsewhere) is high treason. See *Br. Treason 1. & 13. Fitz. Triall. 54. & 25. E. 3. cap. 2.*

If a subject shall goe beyond the Sea, and there shall adhere, or joyne himselfe with the Kings enemies, and there (in such enmitie) shall die, or be slaine, this seemeth to be treason, and to be an attainer in Law; without any more, &c. by the ancient common law of this Land: as appeareth, *8. E. 3. Fitz. Dower 106.*

So if a subject shall joyne in battell within the Realme, to the Kings enemies, and shall be slaine in the field; by the ancient Common law of this Realme he shall forfeit his lands, goods, and chattels, and his blood shall be corrupted, without any other judgement; for that he himselfe is the cause, that he cannot come to the triall of Law in his lifetime. *Pl. 262. a. & 263. a. Vide stat. 34. E. 3. cap. 12.*

Br. Treas 31

Dyer 143.  
vide.

But if an alien enemy come to invade this Realme, and bee taken in warre, he cannot be indicted of treason, but he shall be put to death by martiall law, *C. 7. 6. b.* Otherwise it is of an alien, whose King is in league or at peace with our King, he shall be indicted and arraigned of treason, and shall have judgement accordingly. An English traitor pleading that he is a subject to a forraigne Prince, shall notwithstanding (upon a *Nihil dict* recorded) have judgement as a traitor. *Dy. 300.*

If any person shall joyne the Armes of England with his owne Armes, it seemeth to be high treason. See *37. H. 8. Br. Treason 2.*

If any person shall counterfeit the Kings Armes, or the Armes of this Realme, it is high treason, as *M. Kitchin* hath it, *fol. 12.*

P. 1. 2.

1 M. 6.

Br. 3. 17.

To counterfeit the Kings great Seale, signe manuell, privy signet, or privy seale, is high treason. *25. Ed. 3. cap. 2. & 1 Mar. 6.* But before the Statute *25. E. 3.* these were petty treason by the Common Law, *Fi.*

So to take an old Seale from another Patent, &c. and put it to a new Patent, &c. yet *quere* whether this be Treason, or but misprision. *M. Stamf. fol. 3. c.* saith, that it was adjudged to be Treason in his time. *Vide ibidem.*

Also it is Treason in such, as without authority shall set the Kings seale upon any writing. *Speculum Inst.*

*Quere* of such as shall fraudulently thrust a writing (among others) to the seale, and so get it sealed.

To counterfeit the Kings money (*sc.* the coyne of this Realme, or such as by the Kings authority is coyned within this Realme, or within the Dominions thereof) is high treason. *Stamf. 3. c. 25. E. 3. cap. 2.*

So to counterfeit any other coyne of any another Realme, which (by the Kings

Kings Proclamation, or by act of Parliament or permission ) is made currant within this Realme, is high Treason. 1. *Mar. Par. 1. cap. 6. Co. L. 208.*

So to forge or counterfeit such coyne, though hee uttereth it not. *Stamf. 3. d.*

To forge or counterfeit any coyne, which is not currant in this Realme, is misprision of treason. *Pr 27. P. 4.*

To clip, wash, round, file, impaire, diminish, lighten, or falsifie any coyne or money of this Realme, or any other Realme, allowed or suffered to be currant within this Realme, is Treason. *14 El 3. 5. El. 11. 18 El. P 5. 6.*

To bring from beyond the Sea, into this Realme, any false or counterfeit coyne, or money made in any other Realme, like to the coyne of this Realme ( or like the coyne of any other Realme, being currant within this Realme ) knowing it to be false, to the intent to merchandise therewith, or to make payment thereof, in deceit of the King and his people, is high Treason: but to bring such money into *England* out of *Ireland*, is but misprision, though he knoweth it, and uttereth it, *Quia Hibernia est quasi membrum Angliae.* *1 & 2 P. & M. P. 3. 25. E. 3. c. 2. Finch. 3 H. 7. f. 10. Br. 19. 8.*

If he which by the Kings warrant doth coyne money ( either in *England*, *Ireland*, or else where ) maketh it much lesse in weight than the ancient ordinance; or coyneth false mettall, it is Treason. *Br. Treason 19.*

So to coyne any money not having authority, or warrant to doe, is high treason. *Speculum Iustic.*

To coyne farthing tokens, is no Treason, but is punishable in the Star-Chamber: And so Sir Francis Harvey delivered it in his charge at *Cambridge* Summer Assises *An. 1631.*

To utter false money made within this Realme, or other the Kings Dominions, knowing thereof, is misprision of treason. *3 H. 7. f. 10. Dyer 266.*

The booke called the *Mirroure of Iustices* ( or *Speculum Justiciariorum*, written by M. Andrew Horne ) divides these former treasons into two sorts, *sc. Le Crime de Majestie. & Le Crime de Fausonnerrie.*

*Le Crime de Majestie 3. x.* { Such as shall kill the King, or shall compasse to doe it.  
Such as shall doe or procure any thing, *ad seditionem domini Regis, vel exercitus sui.*  
Such as shall deflower the Kings Wife, his Daughter, or the Wife of the Kings heire.

*Le Crime de Fausonnerrie* is in { Falsifying the Kings seale.  
two manners, *sc. by* { Falsifying his money.

Also to kill the Kings Chancellor, Treasurer, Just. of either bench, Just. in Eyre, Just. of Assise, or Just. of Oyer and Terminer, being in his place doing his office, is high treason. *25 Ed 3. 2. P. 1.*



But because many other like cases of treason might happen; &c. it was (by the stat. 25. E. 3. ca. 2.) accorded, that if any other case supposed treason which is not in that statute specified, doth happen before any Justices; the Justices are not to proceed thereupon, untill the cause be declared before the King and his Parliament, &c.

Also by the Statute of 1. *M. Parliament 1. & Sessio. 1.* it is ordained, that no act, deed, or offence, made treason, petty treason, or misprision of treason, by any act of Parliament or statute, shall be taken, deemed, or adjudged to be high treason, petty treason, or misprision of treason, but only such as be declared to be treason, petty treason, or misprision of treason, in or by the said statute made 25. E. 3. &c. any statute made before or after the said statute of 25. E. 3. or any other declaration or matter to the contrary notwithstanding.

*Stamf. 5.* Note, that the counsellors, procurors, consentors, abettors, and aiders to  
*P. 2, 3, 4, 5, 6* any of the aforementioned treasons, be all within the compass and danger of  
*19 H. 6. 47* high treason, for in treason all the offenders be principals.

*P. 8* To conceale or keepe secret any high treason, is misprision of treason,  
*1 & 2 P. & 1 E. 6. c. 12. 5. & 8. Ed. 6. cap. 11. & 1. El. cap. 6. sc.* when a man shall con-  
*22. c. 10.* ceale it, and not discover it to the King, or to some of the Kings Councell, or to some other Magistrate.

And all receivers and accessaries (to high treason) after the offence seeme to be in case of misprision. *Vide posteatit. Accessarie.*

To set at large unlawfully any person that is committed to prison, ward, or custody for treason, is treason by the Common Law. See 1. H. 6. fol. 5. *Br. Treason 11.*

If one that is in prison for felony shall breake the prison, whereby a Traitor being in the same prison shall escape, this is treason (in him that broke the prison) by the Common Law. *Vide 1 H. 6. 5. hic cap. 91.*

So voluntarily to suffer any person to escape that is committed to prison, or but under arrest for treason, this is treason by the Common Law, *Stamf. 32. 1.*

*Dyer 98.* If two or more doe conspire to commit high treason, and some or any  
*Co. 1. 28.* one of them after doe commit and execute it, this is high treason in them all by the Common Law.

*Co. 8. Pref.* Note also that the foresaid statute of 25. E. 3. cap. 2. is but a declaration and explanation of the Common Law before, for all the said treasons in the said statute mentioned, were treason by the ancient common law of this Realm, before the making of the said statute.

*Treasons by Statute.* Since which time of King *Edw. 3.* divers other offences were made treason, as appeareth by the statutes 22 *Rich. 2. 2. H. 3. 6. 3. Hen. 5. 6. 8. H. 6. 6. 4. H. 7.*

H.7.18.22 H.8.9.26. H.8.13.27. H.8.2.28 H.8.10. & 18. 31. H.8.8. 32. H.8.25.33. Hen.8.21.35. Hen.8.1. and first Ed.6.12. all which were repealed againe by the said Statute made 1. M. Parliament 1. or before, as is aforesaid.

Also since the aforesaid statute of repeale, there have beene divers other offences made or declared to be treason, whereof some were but as an addition to, or an exposition of the treasons before specified, and mentioned in the said Statute of 25. E.3. ca.2. viz. the statutes 1. M.6.1. & 2. P. & M. 11.5. L.1.2.18. Eliz.1. & 14. Eliz.3. by which five several statutes last mentioned, the counterfeiting of the K. seale, or abusing his coyn and bringing in of false coyne, &c. are in some particulars more full prohibited than before, as may herein before appeare.

There are also divers other offences made high treason (by other statutes made since the beginning of the raigne of Q. Eliz.) and those specially made for the preservation of the said Queen, her heires and successors, and of the dignitie of the imperiall Crowne of this Realme, and for the avoyding of the dishonours, inconveniences, and dangers growing to the whole estate, by meanes of the jurisdiction of the See of Rome, heretofore usurped within this Realme, &c. as hereunder appeareth.

First, the maintaining or extolling the authority of the Bishop or See of The Bishop Rome, within any the Kings Dominions; and the procurors, counsellors, of Rome. § El.1. aiders, and maintainers thereof, and every of them. P. Rome 1.

For the first offence they shall incur the danger of a *Premunire*; the second offence is high treason.

Also the bringers over of any bookes, that shall maintaine, set forth, or defend any such authority; and the readers and hearers of such books, that shall justifie them.

And such as shall deliver any such bookes to others, with allowance and liking of the same.

And the Printers and utterers of such bookes within this Realme, all and every such offenders are (by the Judges) resolved and construed to be with- Dyer 182. in the meaning of the same stat. of 5. El. ca.1. and their first offence to be a Go.7. pref. *Premunire*, the second high treason.

Again, the refusall of the Oath for the Kings supremacie (in all causes § El.1. and over all persons, &c.) after lawfull tender thereof made; the first refusal is a *Premunire*, the second refusall is high treason. P. Crowne. 6. & 8.

The second refusall of the oath of Alleagiance, being tendered according to the statute, is a *Premunire*, &c. 7. Iac. c.6. Jac.4. P. Recus. 45.

Again, to obtaine or get from Rome, or from any claiming authoritie from thence, any Bull or writing, (the effect whereof is to absolve and, 13. El.2. P. Crowne. 2. p. prem. 301 and,

and reconcile all those that will forsake their due obedience to the King and yeeld themselves to the B. of Rome,) or to give or take absolution, by colour of any such Bull; or to grant or promise any such absolution or reconciliation; or to use, publish, or put in ure, any such Bull; every such act shall be high treason, as well in the offenders, as in the procurors, abettors and counsellors to the fact.

*Ibid.*

And all aiders, comforters, and maintainers of any such offender, after the fact shall incurre a *Premunire*.

13. El. 2.

P. Rome 4.

To conceale such Bull (or writing) or such absolution offered them, and not within six weekes to disclose it to some of the Kings privie Councell, is misprision of treason.

To purchase or pursue (in the Court of Rome, or else where) any Excommunication, Bull, or other Instrument against the K. his Crowne, or Realme; or to bring them within this Realme; or to receive them, or to make notification, or any other execution thereof, within the Realme, or without, every such offender, their procurors, maintainers, abettors, and counsellors, shall incurre the danger of a *Premunire*, 16. R. 2. cap. 5.

23. El. 1.

3. Jac. 4.

P. Rome 7.

To practise (beyond the seas, or upon the seas, or else where within the Kings dominions) to absolve, perswade, or withdraw any subject, or any within any his Highnesse dominions, from their obedience to his Majesty; or to reconcile them to the Pope, or to draw them to the Romish Religion, (by argument, bookes, or otherwise,) for that intent; or to move them to promise obedience to the See of Rome, or to any other Prince, to be had or used within the Kings Dominions; every such person, and their procurors, aiders, counsellors, and maintainers, knowing the same are all in case of high treason.

3. Jac. 4.

23. El. 1:

3. Jac. 4.

P. Recus. 49.

P. Rome 7.

P. Rome 8.

To bee willingly absolved, perswaded, withdrawne, or reconciled, as aforesaid, or to promise any such obedience, every such person, and their procurors, counsellors, aiders, and maintainers (knowing the same) shall be adjudged Traitors, except they subnit themselves, according to the statute, within six dayes after their returne into this Realme, &c. *Vide antea tit. Recusants.*

27. El. 2.

P. Ignis 2.

To conceale any such offence, and not within 20 dayes to disclose it to some Justice of peace, or other higher officer, is misprision of treason by the stat. 23. El. 1. P. Rome 8.

Againe, for any Jesuit, Priest, or other Ecclesiasticall person (borne within any the Kings Dominions) and made by any authority from the Bishop of Rome, to come into, bee or remaine, in any of the Kings Dominions, contrary to this statute, is high treason.

To



To receive, relieve, aide, or maintaine any such Jesuit, &c. (being at liberty, and knowing him to bee a Jesuit, &c.) is felony, without benefit of Clergy. 27. *El. cap. 2.* P. Jesuits 2.  
101.

To conceale such a Jesuit, &c. *sc.* not to discover them to some Just. of peace, or other higher officer, within twelve dayes, is punishable by fine and imprisonment.

And the Just. of peace, or other such officer, to whom such a person shall bee discovered, if within 28 dayes they give not information thereof to some of the Kings Councill, &c. they shall forfeit 200 markes, See *plus* 27. *El. 2.*  
*ut Recusants.* P. Jesuits 4.

If any of the Kings subjects (not being Jesuit, or Ecclesiasticall person) which are or shall be brought up in any Seminary, or Colledge of Jesuits, or Seminary beyond the Sea, shall not (within six moneths after Proclamation in that behalfe to bee made in *London &c.*) returne into this Realme, and within two dayes after such returne (before the Bishop of the Diocesse, or two Justices of P. of the County where he shall arrive) submit himselfe to the Kings laws, and take the oath of Supremacy, (set forth, 1. *El. 1.*) then every such person which shall otherwise returne or come into this Realme, or any other his Majesties Dominions without such submission, shall be adjudged a Traitor. 27. *El. 2.*  
P. Jesuits 4.

For (as one saith) it may justly be feared, not only of all Jesuits and Seminary Priests, but also of all such other (Jesuited) persons whatsoever, that shall come into his Majesties Dominions, or returne into this realme, contrary to this statute, That it is not Faith, but Faction; not Truth but Treason; not Religion; but Rebellion; which is the cause of their comming.

To convey, deliver, or send, yeeld, or give any reliefe, to or for any Jesuit, or Priest, &c. or other person abiding in any Seminary beyond the Seas, &c. is a *Premunire*. 21. *El. 2.*  
P. Jesuits 5.

To bring into this Realme any *Agnus Dei*, crosses, pictures, beads or such like superstitious things, consecrated by authority from the Pope, and to deliver them, or to offer or cause them to be delivered to any subject of this Realme, is a *Premunire*, as well in such person, as also in them that shall receive any such thing, to the intent to use or weare it. 13. *El. 2.*  
P. Rome 54.

The person to whom such *Agnus Dei* &c. shall be offered, must apprehend the party offering the same, and bring him to the next Just. of peace; or else must within three dayes disclose his name and place of abode, to the Ordinary, or some Justice of P. in that County: and if hee received any thing, he must deliver the same within one day to a Justice of Peace of that County, where the party so receiving the same shall then be resident or happen to be. And that the Justice of peace, within 14 dayes must disclose the same.

same to one of the Kings Majesties Privie Councell upon danger of a  
*Premunire.*

*Misprision. CAP. 90.*

**T**Here be certaine offences which by the Common Law, are Misprision of Treason, or at least punishable in the same degree, or in a higher degree.

As

To draw a sword to strike a Justice sitting in a place of Judgement, is Misprision of Treason.

So

To strike a Juror in the presence of the Justice sitting in place of Judgement. *Br. Contemps 9. & Fitz. Judg. 174. Fi.*

So to strike another in *Westminster Hall*, sitting in any of the Kings Courts there. *Dyer 188. Fitz. Cor. 280. Fi.*

So it seemeth to draw any weapons (therewithall to strike any person) in the presence of the Justices, or to make any affray in their presence. *Br. Paine 16. Stamsf. 38.*

So to rescue any such offender. *Ibid.*

So to strike any person in the Kings Court (Palace, or other house) the King being then in his Court. And judgement was given accordingly in such case, upon a Knight, *Ann. 33. Hen. 8.* for striking another at *Greenwich*, the King being there, *Br. Ibid.* Yet now see the stat. of 33. *H. 8. 12.* That such an offender in the Kings Palace (although he shall draw blood by striking there) he shall forfeit neither the profits of his land; nor his goods, but shall lose his right hand, be imprisoned during his life, and shall pay fine and ransom at the Kings pleasure: And so now such an offence done in the Kings palace, shall not have so grievous a punishment, as if it be done in *West. hall*: see *Stamsf. 38. d.*

But in the former cases, the offender shall have judgement as in Misprision of treason, and besides shall have his right hand cut off. *Br. Paine 16. Fitz. Forf. 21. Dyer 188.*

If one of the Kings Justices doe arrest one who made an affray before him sitting in place of Justice, and a stranger shall rescue the prisoner, whereby he escapeth, this is misprision of treason in them both; for that the arrest by the Justice was (in law) the arrest of the King himselfe.

Note, that every treason, or felony, doe include misprision, so that where any person hath committed treason or felony, the King may cause the offender to be indicted and arraigned but of misprision.

Misprision is properly, when one knoweth that another hath committed, or is about for to commit any treason, or felony, but was not, or is not consenting

senting thereto, and will not to discover the offendor to the King, or his counsell, or to some Magistrate, but conceals the offence. *Stamf. 37. Stat. Stamf. 37. 5. E. 6. c. 11.*

For misprison of treason, the offendor shall forfeit to the King his goods and chattels for ever, and the profits of his lands during his life, and also shall be imprisoned during his life. *Br. Trea. 19. & Stamf. 38.*

3. H. 7. f. 10.

For misprison of felony the offendor shall bee onely fined (and ransomed) by the Justices before whom hee shall be attainted, and shall be committed to prison untill hee hath paid his fine. See *Br. Trea. 25. & Finch lib. 2. fol.*

The forfeiture.

For high treason, the offendor being a man, shall be drawn upon a hurdle unto the place of execution, and there shall be hanged by the neck, cut down a live, and his entrailes and privie members shall be cut from his body, and bee burned within his view; and then his head shall bee cut off, and his body quartered, and then to bee disposed of at the Kings will.

Also hee shall forfeit all his lands and goods to the king: yea at this day *Vide Co. L. (by the stat. made 26. H. 8. cap. 13. & 5. Ed. 6. cap. 11.)* his lands entailed shall be forfeited; and his wife shall lose her dower. (saving in certain cases. *Vide Stamf. 182. & 187. Co. 1. 103. 3. 10. & 7. 33. 34. & Dyer 289. & 332. Pl. 237. b. 149. b. 554. b. & 559.*

But the judgement & sentence of condemnation upon a woman in case of treason, is that shee shall be drawn upon an hurdle unto the place of execution, and there burned. *Stamf. 182. c.*

In case of *Pramunire*, the offendor (being attainted upon the statute of *P. Prem. 19. 16. Rich. 2.*) shall forfeit all his lands which hee hath in fee, for ever, and all his goods and chattels to the King; but his lands whereof hee hath an estate taile, hee shall forfeit onely during his life, and shall bee imprisoned during his life. But some doe hold, that if the offendor be attainted upon the stat. of *27. Ed. 3. ca. 1.* there the offendor shall forfeit nothing if he appeare at the day of the *Pramunire* returned. See that stat. & *Br. Prem. 6. & Crompt. Autor. ders. cots. 97.* Yet others doe hold that as upon the statute of *16. R. 2. cap. 5.* the offendors shall forfeit their lands and goods if they be attainted (*Br. Premun. 6. & 20.*) so upon the stat. of *27. E. 3.* if the offendor doe appeare and plead, and bee found guilty, he shall have the judgement of *Pramunire*, *sc.* to bee put out of the kings protection, and shall forfeit his lands, goods and chattels to the King, and his body shall be imprisoned during his life, (or untill hee hath made fine & ransome at the Kings will.) See the stat. & *Co. 11. 34.* & the old *Natur. Bre. fol. 159. Co. L. 110. & 391.*

Now for the offenders in high treason, misprison of treason, & *Pramunire*, although the Justices of peace (by their commission, nor by stat.) can-

9 H. 4. 1.  
Br. Trea. 9.  
Fitz. Just. de  
not peace 7.



not meddle with them in the very point of their offences, saving in some particulars, and that by way of inquiry only, which you may see *hic antea tit. Felony cap. 20*. Yet for that all treasons and such other offences are against the peace of the King, and of the Realme, therefore upon complaint made to the Just. of P. or other knowledge had by him of any such offenders, it shall be his part to cause such offenders to be apprehended, and to joyne with some other Justice of P. in taking their examination, and the information upon oath of such as bring them, or of others that can prove any thing materiall against them, and to put the same in writing (under the hands of the informers) and then to commit the offenders to the gaole; and also to bind over by Recognizance all such as do declare any thing materiall, to appeare and give evidence against such offenders before the Lords of the Kings Majesties privy Councell, or in the Kings Bench, or at the Assises and Gaole delivery, or elsewhere, when they shall be called, upon reasonable warning, and after to certifie their doings therein to some of the Lords of his Majesties said Councell.

24. H. 8.  
c. 13.

Note, that all treasons, misprision of treason, and concealement of treason, done or committed out of the Realme, shall be inquired of, and tried within the Realme, *sc.* in the Kings Bench, or else before speciall commissioners. see Stat. 35. H. 8. cap. 2. & 5. E. 6. cap. 11. P. Treas. 18. & Dyer 287. 298. 132. 360. Co. 7. 23. & 11. 63.

Pettie Treason. CAP. 91.

25. E. 3. c. 2.  
P. Treas. 8.

**P**etty treason is when wilfull murder is committed (in the estate Oecononimicall) upon any subject by one that is in subjection, and oweth faith, duty, & private obedience to the party murdered, as in these cases following:

Servant.

1b d. & 10.  
Ass. 30.

If a servant maliciously killeth his or her Master or Mistresse; this was petty treason by the Common Law, *Stamf. 10. 1. Br. 8. 12. & Co. 11. 34. & 25. E. 3. cap. 2.*

1bid.

Fy. Co. 118.

Stamf. 10.

A servant of the age of thirteene yeares, killed her Mistresse, it was adjudged in her petty treason. *Br. Treas. 12.*

A servant that is departed out of service, and a yeare after killeth his master upon malice conceived when he was in his said service, it is pettie treason. *Br. Treas. 1. 5. 33. Ass. p. 7. Co. 1. 99. b.*

Crom. 19.  
10. 2.

A servant doth procure another to kill his master, who killeth him in the servants presence; this is pettie treason in the servant, and murder in the other. See *Plo. 100. a & Br. Cora. 119. & quere.*

Dyer 128.

But if the estranger doth kill the master in the servants absence, then the servant is onely accessory to the murder, but it is no pettie treason in him.

A servant conspireth with a stranger to rob his master, and at a time appointed in the night, he letteth in the stranger into the house, and leads him to his masters chamber, and the stranger killeth his master, the servant standing by but saying nothing, this is pettie treason in the servant, and murder in the stranger: yet by some this is but murder in the servant, *ibid.* & 40. *Aff Br. Cor. 119.* For where the principall is but a felon, the accessory cannot be a traitor. See *Plo. 100. a.* that the servant is a principall in this case, & *postea tit. Accessary.*

A servant commands one to beat his master, and he killeth him, this is petty treason in the servant, if he be present. *Cromp. 10.*

A servant upon malice pretended shooteth at an estranger & misseth him and killeth his master, being by; this is petty treason in the servant, (though he intended no hurt to his master yet) because he intended murder thereby. *Cromp. 20.*

The wife Maliciously killeth her husband, this is petty treason. 25. *Ed. The wife.* 3. *cap. 2.* *Br. Treas 308*

The husband maliciously killeth his wife, this is but murder.

The reason of this difference, is, for that the one is in subjection and oweth obedience, and not the other.

The wife and a servant doe conspire to kill the husband, and the servant killeth him in the wifes absence; this is petty treason in them both. *Dyer 332.*

The wife and a stranger doe conspire to kill her husband, and he killeth her husband in the wifes absence; this is no petty treason in the wife, but murder in the stranger, and she shall be hanged as accessory to murder. *Dyer ibid.*

Also where the wife or servant procuring, conspiring, or praestising such murder, at the time of such murder is in the same house, though they bee not present thereat, but are in another roome, yet it is petty treason in them, as it seemeth by two Cases reported by Master *Crompton* in 4. & 5. *Mar.* *Crom. 20. a.*

The wife poysoneth a thing, to the intent to poyson her husband therewith, the husband eateth of it, and becommeth very sicke thereof, but recovereth, after an estranger eateth thereof, and dieth thereof, this is onely murder in the wife. *Plo. 174.* *Co. 9. 31.* See more in the title of murder. *Cromp. 10.*

The wife poysoneth an Apple, to the intent to poyson a stranger therewith, and layeth it to that purpose in a secret place, and the husband by chance eateth of it, and dieth thereof within a yeare and a day, this is petty treason in the wife, for that she intended murder thereby.

The wife poysoneth an apple, or other thing, and delivereth it to B. (knowing nothing of the poyson) to give to C. and B. giveth it to the husband, (without the assent of the wife) who eateth thereof in the wifes absence, and he dieth thereof, this is petty treason in the wife. *Cromp. 2.*

And yet if A. lay impoysoned fruit for a stranger being his enemy, and his father or mother come and eat it, Sir *Fr. Bacon* maketh a *quare*, whether this be petty Treason, because it is not altogether *Crimen paris gradus*. But saith he, *in criminalibus sufficit generalis malitia intentionis cum facto paris gradus. Regula. 15. pag. 65. 66.*

The child.

21. E. 3. 17.

Co 7 13. b.

Br. Treas. 6.

The child maliciously killeth the father, or mother, this is petty treason (although the father or mother at the same time gave neither meat, drinke, nor wages to such child : ) But it is treason in the child, in respect of the duty of nature violated. *Vide Ba. 53.*

Cromp. 21.

A Bastard killeth his mother, this seemeth petty treason, for the mother is certainly knowne.

Dalisons.

Rep.

2. M. 1.

The son or daughter in law, killeth the father or mother in law, with whom they dwell and do service, and have meat and drinke, it is petty treason, although such child take no wages ; but the Indictment shall be by the name of servant.

A Clerke.

25. E. 3. ca. 2.

Br. Treas. 7.

A clerk, or any Ecclesiasticall person maliciously kills his ordinary, or superior, to whom he oweth obedience, this is petty treason. 19. H. 6. 47.

Note, that unto the Bishop of every Diocese, the Clerkes within their Diocese doe owe faith and obedience, which is called Canonically obedience. *Finch 137.*

Note further, that whatsoever act will prove murder between strangers, the same will make petty treason from the servant to his master, from the wife to her husband, from the child to the father or mother, and from the Clerke to his Prelate or Ordinary, *Mutatis Mutandis.*

Otherwise it is betweene these persons, where it is not wilfull murder : as if the servant shall kill his Master upon a sudden falling out without any malice precedent, or by misadventure ; or *se defendendo*, these are not petty Treason, neither shall the Indictment be Proditorie, &c. And so of the wife, or child.

Break pri-

son.

Stamp. 12.

Breaking of prison, whereby prisoners that were there in for treason doe escape, this is also petty treason. 1. H. 6. 5. *Br. 11.*

A Norman being Captain of an English ship, wherein also were certaine Englishmen, and they robbed upon the sea, this was adjudged felonie in the Norman, and treason in the Englishmen, and they were drawne and hanged. 40. Ass. p. 25. *Br. Coron. 119. & Treason 16.*

But at this day all felonies, robberies, murders, and pyracies done upon the high sea, are to be tried before the Lord Admirall in the Court of the Admiralty, and according to the Civill Law. Or they may be attainted before Commissioners by force of the Stat. of 28. H. 8. 15. and then they shall forfeit their lands, and their blood shall be corrupted. *Co. L. 391. See hic cap. 92.*

Also



Also it hath beene adjudged pettie treason in some books, and felony in some other, for an Indictor (in case of treason, or felony) to discover the Kings Councell and their fellowes (*sc.* to discover to others what person they have indicted, or if they have indicted any, then to shew to others what they have done therein, and by whose meanes, &c.) But now that offence is taken onely to be fineable to the King.

The punishment of pettie treason is this: the man so offending shall be drawne and hanged: the woman shall be burned alive, in case as well for pettie treason, as of high treason, 1.R.3.4. But in case of felonies, the judgement both of man and woman is to be hanged.

Also no person or persons (be they lay, or within holy orders, &c.) which shall be attainted or found guilty of any manner of pettie treason, nor any accessory thereto before the fact, shall be admitted to have the benefit of his or their Clergy. See the stat. 12.H.7. c.7.23.H.8. c.1.28. H.8.cap.1. 32.H.8.cap.3.1.E.6.cap.12. & 4.& 5.Ph.& Ma.cap.4.

The forfeiture for pettie treason, is, the King shall have his goods, and for his lands the King shall have *annum, diem, et vastum*, and the Escheat thereof shall be to every Lord, of his own proper fee. 25.Ed.3. cap.2. But for pettie treason, or felony, if the offender hath but an estate taile in his land, he shall forfeit them but onely during his life, *Stamf.* 186, 187. And for petty treason, if the husband be attainted, the wife shall be barred of her Dower. *Co.L.* 37.

The Justices of peace may inquire of pettie treason, as of felony: and out of their Sessions, every Justice of P. may deale with the offenders therein, as in case of felony, by examination of the offenders, by taking information against them, and binding over the informers to the generall Gaole: delivery, and by committing the offenders to the Gaole.

Of Felonies by the Common Law. CAP. 92.

**F**ELONY, by some this word is derived: *quasi felleo animo factum L. & Co.* 4.124. *Ideo dicta est fellonia, quia fieri debet felleo animo.* (with a mind as bitter as gall.) *Minsh.* 2. rbo felon, saith it comureth of the French word *felon*, *id est atrox, crudelis: ut la velando, cum celari & occultari semper velit.*

By the Law at this day, under the word Felony, is included petty treason, murder, homicide, chance-medley, *Se defendendo*, burglary, robbery, theft, rape, burning of houses, petty larceny, rescous, and escape, &c. *Co.L.* 391.

Homicide most properly is, *hominis occasio ab homine facta*; for if a man be killed by a beast (as a horse, or a dog) or by any other thing or mischance, although that be *hominis vedium*, (of which two words Homicide

is derived) yet in such cases it is not aptly nor usually said that homicide is committed; but onely a man is said to bee slaine.

*Lamb. 235.*

Others doe thus define or describe it, Homicide is the felonious killing of one man by another within the Realme, and living under the Kings protection.

But to kill a man beyond the seas, or to strike and give one a mortall wound beyond the seas, or upon the sea, whereupon hee dieth upon the land (within this Realme) these homicides are not punishable as felonie by the Common Law; for that they cannot be inquired of, nor tried here: for in criminall cases, the rule is, *Vbi quis delinquit, ibi punietur*: So *Co. 2. 93. 6. 47.* But in treason it is otherwise: See hereof *paulo antea, cap. 89. & 91.*

And yet all appeales to bee made of things done out of the Realme, shall bee tried before the Constable and Marshall of England by the *Stat. 1. H. 4. cap. 14.* So that if any of the Kings subjects shall be killed, by another of the Kings subjects in Scotland, or in any forreine Realme, the wife or heire of him which is so slaine may have an appeale thereof in England before the Constable and Marshall, &c. *Stamf. 65. b. V. Co. L. 74.*

*Hic cap. 91.*

Also to kill a man upon the sea, although it bee not triable by the common Law, yet it is felony, and is enquirable and triable in the Admirall Court; for those of the Admiralty have jurisdiction where both the stroke and dying is upon the sea; otherwise not. And therefore in 25. *Eliz.* it was adjudged in one *Lacyes* case, that where the said *Lacye* had stricken *Peacocke*, and given him a mortall wound upon the sea, whereof *Peacocke* dyed at Scarborough (in Yorkshire,) the said *Lacye* was discharged thereof, for that those of the county of Yorke could not enquire of the death without enquiry of the stroke; and the stroke they could not enquire, for that it was not given within any county. See *Co. 2. 93. & 5. 106. 107. & Stat. 15. R. 2. ca. 3. & 2 H. 5. cap. 6.* But yet by the statutes made *Anno 27. H. 8. c. 4. & 28. Hen. 8. cap. 5.* all offences of Pyracy, robbery, murder, or other felony done or committed upon the sea (or in any other Haven, River, or Creeke where the Admirall pretends to have jurisdiction) shall be enquired of, heard, tried, and determined in such shires and places within the Realme, and before such persons as shall be limited and appointed by the Kings Commission; and after the common course of the lawes of the Land, used for felonies committed within the Realme, and such as shall be so convicted of any such offence shall have and suffer such paines of death, and forfeiture of Lands and goods, as if they were convicted of murder or felony done upon the land.

*Lamb. 233.*

But whether hee that is slaine, be an Alien, or a Denizen an Englishman or stranger, it maketh no difference (if he live under the Kings protection.)







*Lamb. 133.* But whether hee that is slaine, be an Alien, or a Denizen an Englishman  
or stranger, it maketh no difference (if he live under the Kings protection.)

To

To kill a man that is attainted (by verdict, or by outlawry, or otherwise) *Co. 7. 13. 14.* of any murder, felony, or treason, is felony : for none may kill or put to *Cromp. 14.* death any of these, but the officer of Justice, and by lawfull warrant. See *Doct. & Student f. 133. Co. L. 128. b.*

Also to kill a man attainted upon a *Pramunire*, is felony at this day. See the stat. 5. *El. c. 1. & Co. 7. 14. Co. L. 130.*

Also to kill a man that hath abjured the Realme, is felony : See *Co. 7. 9. Co. 7. 14. b.* and the *Doct. & Student f. 133.*

For note, that the Kings protection belongeth by the law of Nature to all these, and the King may protect and pardon them all.

Homicide is threefold	{	<i>Voluntate &amp; est</i>	Murder,
		<i>duplex.</i>	Man-slaughter, or Chancemedley.
		<i>Casu</i> , or Misadventure : this also	Lawfull,
		is considerable after two sorts,	or
		<i>sc.</i> whether it happen in doing	Unlawfull.
		a thing	
	{	<i>Neccessitate</i> : this	Commanded, <i>sc.</i> in execution of Justice.
is sometimes		tolerated { for advancement of Justice.	
		<i>Se defendendo.</i>	
			Prohibited. See <i>post tit. Homicide. c. 98.</i>

### Felo de se,

**B**Ut first to write something of *Felo de se*.

For the hainousnesse thereof, it is to be observed, that it is an offence against God, against the King, and against Nature ; also it is within the degree of, or of the quality of murder, *sc.* pretended and resolved of ( in his mind ) to be done, before it be done, yea, it is holden to be a greater offence, than to kill another man. *Plow. 261.*

And yet the civill Law maketh a difference of such offenders, and of their punishment, according to the quality of their minds, whereby they were moved to kill themselves ; for if they kill themselves through griefe or impatience of some infirmity, no punishment followeth such their fact ( by the civill Law ) but they are left to the Tribunall of the Almighty Judge of the quicke and the dead ; but if they kill themselves upon any other cause, their goods are confiscated, and their dead bodies ( for the terrour of others ) are drawne out of the house, &c. with ropes, by a horse, to a place appointed for punishment, or shame, where the dead body is hanged upon a Gibber ; And none may take downe the body, but by the authority of the Magistrate &c. *Vide Fulbecke 90.*

But by the Common Law, if a man kill himselfe ( either with a meditated hatred

*Dye 162.  
f. 10. 263.*

hatred against his own life, or out of distraction, or other humor) he is called *Felo de se*; & he shall forfeit to the King all his goods and chattels reall & personall, and his debts due to him by specialty (but no debts due to him without specialty or upon simple contract. *Dyer* 262.16.E.4.7.)

And their goods are usually granted & allowed by the King, to the Bishop Almoner, and in such sort as *Deodands* are. *Ba.* 3.V.

*Fl. ca.* 301. But hee shall not forfeit his lands, neither shall his blood be corrupt. See

*Pl.* 261. *Fitz. Coron.* 362. & 426.

*Pl.* 262. If a man doe give himselfe a deadly wound, and dieth thereof within a yeare & a day after, all his goods, &c. which he had at the time of the blow given, or at any time after, shall bee forfeited to the King. *Pl.* 262.ab.

*Co.* 4.110. Yet the goods of *Felo de se*, be not forfeited till his death be presented  
*41.H.* 7.33. and found of Record: neither can then these good be claimed by prescription, (by Lords of Liberties, &c.) but by the kings grant.

And although hee cannot be attainted of his owne death, for that hee is dead before that there is any time to attaint him, yet the finding of his death by the Coroner (or other person thereto authorized) is by law equivalent to an attainder in deed, as to his goods, *Pl.* 258. b.

*44.E.* 3. 41. If A. doe strike B. to the ground, & then draweth his knife to kill B. and  
*Fitz. Cor.* 94. B. lying upon the ground draweth his knife to defend himselfe, and A. is so hasty to kill B. that hee falleth upon B. his knife, and so A. is slaine, here A. in a manner is *Felo de se*: and yet shall not A. forfeit his goods in this case. *Br. Cor.* 12. See 44. *Aff. p.* 17. *Br. Cor.* 12. & 14. that A. was after adjudged not to bee *Felo de se* in this case.

If A. of malice propensed dischargeth a pistoll at B. & misseth him, & throwes downe his pistoll & flyeth, and B. pursueth him to kill him whereupon A. turning falleth downe, his dagger drawne, & B. through hast falleth upon the dagger, here B. is *Felo de se*, & A. shall goe quit. 44. E. 3. Sir *Fr. Bacon.* 4. 5.

If a caliver bee discharged with a murtherous intent at I. S. & the peece breaks, and strike into the eye of him that dischargeth it, & killeth him, he is *Felo de se*; and yet his intention was not to hurt himselfe: for *felonie de se*, and murder, are *Crimina paris gradus*. See *Ibid.* pag. 65.

*Stamf.* 19. If one that wanteth discretion, killeth himselfe (as an infant, or a man *Non compos mentis*) he shall not forfeit his goods, &c.

If a lunaticke person killeth himselfe, hee shall forfeit his goods (*Fitz. Coron.* 324.) but this must bee understood when hee killeth himselfe out of his lunacy: otherwise is if hee kills himselfe during his lunacy: for then hee shall neither forfeit his goods, nor bee counted *Felo de se*.

*7.129.* 4. If one being of *Non sana memori*, or a lunaticke, giveth himselfe a mortall



tall wound, and after he becommeth of sound memory, and then dieth of the same wound, in this case although hee dieth, by reason of his owne proper stroke, yet for that the originall cause was committed, when hee was *de non sana memoria*, he shall not be accounted, *Felo de se*, neither shall he forfeit any thing, for that the death hath relation to the originall act, the which was the stroke or wound, given when he was *de non sana memoria*. Co. 1. 99 b. & 4. 42. a. Fitz. Coron. 244. Pl. 260.

The inquiry of such a felony belongeth to the Coroner: And yet if *Felo de se* be cast into the Sea, or so secretly buried, that the Coroner cannot have the sight of his body, and so cannot inquire thereof; then the Justices of Peace, or any other having authority to inquire of Felonies, may inquire thereof (for that is felony,) and a Presentment thereof found before them, intituleth the King in his goods. Co. 5. 110. 13 13

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Murder. CAP. 93.

**O**F old time every killing of one man by another, was called Murder (of the effect) because death ensued of it. Afterward murder was restrained to a secret killing only; and therefore *Bracton* and *Britton* in their definition of Murder, calleth it *Occulta occisio nullo presente, &c.* But since murder hath beene, and is taken in a middle degree, neither so largely as it first was, nor so narrowly as Master *Bracton* and *Britton* speake of it. For murder is now construed to be when one man upon malice pretended, prepened (*sc.* forethought) or precedent and with his will, doth kill another feloniously, *viz.* with a premeditate and malicious minde, whether it be openly or privily done, this is felony of death, without any benefit of Clergy, 23 H. 8. cap. 1. & 1 Ed. 6. cap. 12. See *Exod.* 21. 14. he shall be taken from the Altar, and put to death. Stamf. 18. 1 Plow 261.

This malice pretended or precedent, may be either apparent (as where there was a precedent falling out, or where there is a lying in wait, or a time and place appointed &c.) or it may be lesse apparent or manifest, and yet shall be implied, presumed, and taken to be out of malice precedent, by the manner and circumstances thereof.

As where one killeth another without any provocation, the Law impleth and adjudgeth it to have proceeded of malice prepened: Therefore if one suddenly, and without any shew of quarrell, or offence offered, shall draw his weapon, and therewith kill another. cor 9. 67.

Or if one shall be reading of some book, or otherwise busied, so as hee saw not the party that shall stab or strike him (and hee dieth thereof;), or Cro. 23. 37.

shall be going over a stile, &c. and another sha'l kill him; such offenders shall suffer death as in case of wilfull murder.

1 L. c. 18.

*Cap. 4*

And accordingly hath the Statute 1 Jac. well provided, that if one shall stab, strike, or thrust another, that hath not then a weapon drawne, or hath not then first stricken the other, and if the party so stabbed, stricken, or thrust, &c. shall die thereof within six moneths after, although it cannot be proved that the same was done of malice forethought, yet the offender being thereof lawfully convicted, shall suffer death as a wilfull murdurer, without benefit of Clergy.

Co. 4. 46.

& 9. 66. 68

Co. 9. 69.

To kill the Sheriff or any of his Officers, in their execution of the Kings Processe, or in doing their office, is murder in him that killeth the Officer.

But if he be not an Officer known, he must shew his Warrant before he arrest the party, or upon the arrest (if the other shall demand to see it) or else it seemeth the arrest is tortious; And where the arrest is tortious (be it by an officer known, or by another) there the killing of him that maketh such an unlawfull arrest, is no murder, but man-slaughter only, as it seemeth. Again, where an Officer hath the Kings Writ, or other lawfull warrant, though it be erroneous, yet in the executing thereof if he be slain, this is murder. Co. 9. 68.

Co. 9. 65.

Co. 9. 68.

For the Officer is not to dispute of the validity of his Warrant, or the authority of the Court (or of the Justice of Peace) that sent the Warrant; but his office is to execute the Writ or Warrant.

Co. 4. 49.

& 9. 68.

To kill any Magistrate, or Minister of Justice in the execution of their Office, or in keeping the peace (according to the duty of their Office) is murder in such offenders, for their contempt and disobedience to the King and the Law; and the Law implyeth it to be of malice prepenced. And therefore if the Sheriff, Justice of Peace, high Constable, petty Constable, Watchmen, or any other Minister of the King, or any that come in their aid be killed in doing their office, this is murder.

23 El. 2.

Crom. 25.

If the Sheriff, or Justice of Peace come to suppress Riotors, and one of the Sheriff, or Justices company is slain by one of the Riotors, this is murder in all the Riotors that be there present.

Co. 4. 40.

A Constable with others to aid him, doe come to part an affray, if the Constable or any of his company shall be slain in doing this his Office, it is murder in him that killed him, although the affray were on the sudden, and though it were in the night: for when the Constable commands them in the Kings name to keep the peace, although they cannot know him to be a Constable, yet at their perill they ought to obey him upon such commandement.

Co. 9. 66.

Co. 9. 67, 68

And in these cases the killing of such an Officer, or of any of their company,

pany, is in Law intended to be by malice pretended : *sc.* that the murderer had a malicious resolution in him, to oppose himself against the Law, the Officers thereof, and the Justices of the Realm.

Also if a thief that offereth to rob a true man, killeth the true man in resisting him, it is murder of malice pretended. *Plow. 474. Co. 9. 67.*

A man carried his father (being sick and against his will) in a frosty and cold time, from one Town to another, and the father died thereof; this was adjudged murder in the son.

A Harlot delivered of a child, hid it in an Orchard (it being alive) and covered it with leaves, and a Kite struck at it, and the child died thereof, and the mother was arraigned and executed for murder. *2 Eliz. Crompt. 24.*

A man hath a beast that is accustomed to doe hurt, and the owner knowing thereof, doth not tie him, or otherwise keep him fast shut up, but suffereth him to go at liberty, and after the beast killeth a man, this is felony in the owner of the beast, for by such sufferance the owner seemeth to have a will to kill. *Fit. Co. 311. Stamf. 17 Ex. d. 21 27*

So if a man hath a horse of that property that he will strike such as come near him, and his Master knowing this, rideth upon the same horse amongst a multitude of people, &c. and the horse killeth a man, this is felony in the Master. *Let. M. Cock.*

And in these foure last cases, *voluntas reputabitur pro facto*, death ensuing thereupon : For it may plainly appear, that they had a will and meaning of that harm which followed, which will in them doth amount to malice, and so makes their offences to be murder, and in such cases where death ensueth, *Nihil interest utrum quis occidat, an causam mortis praebeat.*

If a man perswades another to kill himself, and be present when he doth it, he is a Murderer. *Ba. 65.*

The book called *Speculum Iusticiar.* speaking of *Homicide voluntate*, saith it may be, either by striking; imprisonment, famine, or other pain.

1 By striking, or stabbing, &c. as you may see by that already said.

2 By imprisonment; as if a man by imprisonment shall detain the body of another (under colour of Law, or right) unto death, or so as he dieth thereby. See *hic cap. 107. verbo Gaoler.*

3 By famine; as if a man shall cast, or leave an Infant, or other person which cannot go, in a Desert or such other place, where no person usually resorts, by reason whereof such infant, or other impotent person, dieth for want of succour, &c.

4 By pain; as if a man by torture (or *Dures*) causeth another to accuse himself mortally, where in truth he did not the thing, but to be rid of the pain (rather desiring death) he confesseth himself guilty of the felony, when hee is not guilty,



F. Cor 163.  
Stamf. 16

If a man dieth in the hand of a Physitian or Surgeon authoris'd to practise, this is no felony in the Physitian, or Surgeon. And if a Physitian bearing malice to one who is under his cure, shall give him a medicine contrary to his disease, whereof the patient dieth, this is felony in the Physitian.  
*Lectur. M. Cock.*

If a Surgeon authoris'd, doe through negligence in his Cure cause the party to die, the Surgeon shall not be brought in question of his life; and yet if he do only hurt the wound whereby the cure is cast back, and death ensues not, he is subject to an action upon the case for his misfeasance, Sir *Fr. Bacon*. 37.

34 E 3 33.  
Lamb. 236.

And if one which is no Physitian, or Surgeon (or which is not allowed to use or practise such faculty) will take a cure upon him, and his Patient dieth under his hand; this hath been holden to be felony: but *quare* of this last case, for it cannot be discerned whether the patients death commeth by any wilfull default, in the party taking such cure upon him, or by the patients infirmity: again there appeareth in them no will to do harm, but rather to do good, & then the Statute of 34 H. 8. 8. leaveth so great a liberty of such practice to unskillfull persons, that it will be hard now to make it felony. But if a Smith or other person (having skill only in dressing or curing the diseases of horses, or other cattell) shall take upon him the cutting, or letting blood, or such like cure of a man, who dieth thereof, this seemeth to be felony; for the rule is, *Quod quisque norit, in hoc se exerceat.*

44 H. 8. 8.  
P. Surg. 2.

Cromp. 23.

Two playing at Tables, fall out in their game, and the one killeth the other with a dagger suddenly, this was holden murder, in one *Emerges* case, before *Bromley* at the Assises in Cheshire about 27 El. as Master *Crompton* reporteth.

Cromp. 25.

The husband, upon words between him and his wife, suddenly strooke his wife with a pestell, whereon she died, and it was adjudged murder at the Assises at *Stafford* before *Walmesley* 43 Eliz.

*Quare* the reason why it should be murder in thesetwo last cases, considering there appeareth no precedent malice, and that it was done upon the sudden, and upon provocation.

Lamb. 247.

*A.* hath wounded *B.* in fight, and after they meet suddenly and fight again, and *B.* killeth *A.* this seemeth murder, and malice shall be intended in *B.* upon the former hurt: but now if *A.* had killed *B.* this seemeth but man-slaughter in *A.* for his former malice shall be thought to be appeased by the hurt he first did to *B.*

Two were in suit, and they meet suddenly, and quarrell about the suit, and the Defendant killeth the Plaintiff; this seemeth murder, *Tamen quare.*

If *A.* of malice prenced discharge a Pistoll at *B.* and misseth him, and throws

throws down his Pistoll and flies, and *B.* pursueth him to kill him, where-upon *A.* turneth and killeth *B.* with a dagger; if the Law should consider the last impulsive cause, it should say that it was in his own defence: But the Law is otherwise, for it is but a pursuance and execution of the first murderous intent: and the first motive will be principally regarded, and not the last impulsion. Otherwise, if there had been a full interruption. Sir *Fr. Bacon*. 4.

Also wilfull killing of another by poyson, was, and is murder by the Poysoning Common Law. See *Stamf.* 21. & *Br. Indictment* 41.

And the offenders therein, their aiders, abettors, procurors, and counsellours shall suffer death, and forfeit in every behalf, as in other cases of wilfull murder of malice prepenced. 1 *E. 6. c. 12. Speculum Iustic.* describeth these offenders thus, *Qui done al autor a manger, ou autrement, chose envie-noms.*

The husband gave a poysoned apple to his wife, to the intent to kill her, & *Plaw* 474. she not knowing of it to be poysoned, gave it to her child, who died thereof, this is murder in the husband, and yet he loved that child dearly: and so had it been if a stranger of his own accord had after eaten thereof, and died thereof: for the putting of poyson into the apple, &c. upon an evill and felonious intent, maketh it murder, whosoever be killed thereby.

*Co. 9. 81.*

*A.* bringeth drink that was poysoned (knowing of it) to *B.* and advised *B.* to drink of it, telling him it would doe him much good; by reason of which perswasion, *B.* drunk of it (in the absence of *A.*) and died thereof, this was adjudged murder in *A.* although he were not present at the time of the taking of the poyson. If one giveth corrupt victuall to another, to the intent to poyson him, and he dieth thereof within the yeer and day, this is murder. One layeth corruption at another mans doore, to the intent to poyson him with the savour thereof, and the other party taketh infection by the savour thereof, and dieth; this is felony. *Lect. M. Cock.*

*Co. 4. 44.*

*Crompt. 30.*

So if one giveth to another Spurge Comfets, or other such thing in sport, and not in malice, and he that so taketh them dieth thereof; this is felony. *16.*

But if a man shall prepare Rats-bane &c. to kill Rats, &c. and shall lay this in certain places to that purpose, without any evill intent, (*sc.* without any intent to kill any reasonable creature) and another man finds and eats this, and dieth thereof, yet this is no felony. *Plow* 474.

*Co. 9. 81.*

The master upon malice precedent, goeth to kill another, and takeeth his servants with him, (but they knowing nothing of their masters intent) and the master and his servants doe meet the other, and the master doth assault him, and the servants taking their masters part, do also assault and kill him, this is murder in the master, and but manslaughter in the servants.

*P'ow. 100.*

Rules in  
murder.  
Flo 474.

**I** Note, that when a man hath malice to one, and intending and endeavouring to kill him, hee killeth another man, this is murder whomsoever hee killeth: *vide* *Plo. 101. Dyer 128. Fitz. Cor. 262. Stamf. 16.* For his intent was to do murder.

*Lamb. 238.*  
*F. Cor. 162*  
*Dyer 118.*

Nay, if two fight upon malice pretended, and in their fight a stranger (that would part them) commeth between them, and is killed, this is murder in them both, if it may not be proved, which of them did kill him.

*Plo. 474.*

A man upon malice, shooteth at one, or lyeth in wait to kill one, and killeth another unwittingly, in both these cases it is murder.

**2** Note also that in all cases where a man commeth or goeth about to doe any thing unlawfull, as to kill, beat, or disseise another, or to do any other trespassse, and in doing this, he killeth any man, this is murder. See *Cromp. 14 b.*

*Cromp. 24.*

*Lamb. 237.*

One stealing Pears in another mans Orchard, and the owner came and rebuked him, and the other killed him, this was adjudged murder. *4 Maria.*

*Plo. 435.*

*F. Cor. 314.*

Also where a man commandeth another to beat *A.* and he beateth him, so as *A.* dieth thereof, this is murder in him that gave the commandement to beat him, for that he commanded him to do an unlawfull act, by reason whereof the killing of a man ensued.

For (as that late reverend and learned Judge Sir *John Dodderidge p. 138.* sheweth) There is an efficient cause Casuall; as if a man intend to doe any unlawfull act, and in doing thereof another hurt ensueth, not intended, but by chance clean beyond all expectation, or desire, yet shall hee be said the author of that act not intended, (and so happening by chance) that did intend the first act.

*Br. Cor. 172.*

*F. Cor. 350.*

*Co. 115.*

**3** Note also, that if divers persons come in one company to doe any unlawfull thing, as to kill, rob, or beat a man, or to commit any riot or affray, or to do any other trespassse, and one of them in doing thereof killeth a man, this shall be adjudged murder in them all that are present of that party abetting him and consenting to the act, or ready to aid him, although they did but look on. &c. See *Stamf. 40. Fitz. Indictment 22 Plo. 98.*

Nay, if they be not present, yet if they be in the same house, or upon the same ground, it is murder in them all. See the Lord *Dacres Case. Cromp. 25.*

*Plo. 100.*

See here.

**4** Note also, that all that are present, and aiding, abetting, or comforting to another to do murder, are principall murderers. although they shall give never a stroke. See more *4 H. 7. 18. 13 H. 7. 10. Fitz. Coron. 309. Co. 9. 67. 112. & 115.*

As if *A.* and *B.* fall out, and appoint the field, and they meet accordingly, each of them bringing company with them, *A.* killeth *B.* this is murder in all those that came with *A.* as his second, or abetting, com-



comforting, or ready to assist or aid him, for that the presence of these other that came with *A* is a terrour to *B*. and an encouragement to *A*. *Vide ibid. & Pl. 98.*

And yet if *B*. commeth in the company of *C*. who of his malice pretended doth goe to kill *D*. and when *B*. seeth them fighting together, he taketh part with *C*. suddenly (not having any former malice to *D*. and striketh at *D*. with the other, and *D*. is thus slaine amongst them, this is but man-slaughter in *B*. for that he had no malice precedent. *Pl. 100.* See the Case of the Master and his Servants here before. But note that the cause of the coming of *B*. being unknown to *D*. his presence might, and in likelihood did, strike terrour in *D*. and so the presence of the servants did or might strike a terrour in the party murdered, and gave encouragement to the Master.

5 Note also that in case of murder, it is not materiall who giveth the first blow; for if he that is slain gave the first blow, yet if there were malice prepensed in the other, it is murder in him that killed him.

6 Also in case of poysoning, the party poysoned must die thereof, within a yeer and a day, after the poyson received.

Also if a man doe beat or hurt another, whereof hee dieth, to make it murder or other homicide, the party hurt must die within a yeere and a day next after the hurt done, or stroke given. But to have an appeale, it shall have relation to the death, and not to the stroke, so as the appeale must be brought within the yeere after the death, and not after the stroke. *Cor. 303.*  
*Cor. 4. 41.*  
*Co. 4. 41.*

7 Note also in murder, or other homicide, the party killed must be in esse (*sc. in rerum natura*, and borne into the World.) For if a man hurteth a woman with childe, whereby hee killeth the Infant in its mothers wombe, by our Law (at this day) this is no felony; neither shall he forfeit any thing for such offence: and whether (upon a blow or hurt given to a woman with child) the child die within her body, or shortly after her delivery, it maketh no difference: yet in ancient time it was holden to be felony; and Master *Bracton* took it to be homicide, if the blow were given *postquam puerperium animatum fuerit*: But if the mother of the child die within a yeare and a day after such hurt done to her, and upon that hurt, this is felony. *F. Cor. 146.*  
*263.*  
*Stamf. 21. 6.*  
*Sec. Exch. 1*  
*11. 22, 23.*  
*It was*  
*death by*  
*the Law of*  
*God.*  
*1 Amb. 229.*  
*B. Cor. 63.*  
*91.*

So if the Adulterer &c. counselleth the woman to murder the child when it shall be borne, and shee doth accordingly, the Adulterer is accessary to this felony, by this his counsell given before the birth. *Co. 7. 9.*

Also if one killeth a man unknown, yet it is felony. *Abr. d' Aff. 76.*

8 Compulsion also is a good excuse in our Law; so as if any mans arme be drawne by compulsion, and the weapon in his hand by means thereof doth kill another, this is not felony in him whose arme was so drawne, &c. *Pl. 19. a.*

9 Involuntary ignorance excuseth also with us: So as if an Infant not having intelligence, or a man of *non sane memoria*, shall kill another, this is no felony in them. See hereof *hic postea*.

10 Intent to doe a felony, or murder, is not punishable by the common Law of this Realme, untill the Act be done: But in Treason, and in some other particular cases by Statute, the intent may be punished. *Dott. & Stud. 132. hic.*

In cases of murder or poysoning the offenders shall not have the benefit of Clergie. 1 *E. 6. c. 12. 23 H. 8. 1 & 26 H. 8. 12.*

Note also, that by the Law of God no recompence was to be taken for the life of a murderer. *Numb. 35. 31.*

13 R. 2. c. 1.  
P. Pardon 3  
Plow 502.

And by divers old Statutes, no Charter of pardon ought to be granted to any person in case of murder, or other homicide, save only where the King may doe it by his Oath, that is to say, where a man killeth another in his owne defence, or by misfortune. See *P. Pardon 1.* See also the Statute of 6 *Edw. 1. cap. 9. 2 Edw. 3. cap. 2. 4 Edw. 3. cap. 13. & 14. E. 3. cap. 15.*

See the  
Stat. 2.  
13 R. 2. c.

And by our Law at this day, a pardon of all felonies will not discharge murder, except the pardon be with a *Non obstante*, &c. or that murder be expressly mentioned in the Pardon. See *Co. 6. 13 b.*

Neither will a Pardon of all felonies discharge a man that is attainted of felony, except also the Attainder and the execution be pardoned. See 9 *E. 4. 29 Co. 6. 13. b.*

3 H. 7 fo 7.

Note, that hee which hath a Pardon for felony, if hee hath not found Sureties for his good abearing, or if afterwards during his life, hee shall break the peace; such pardon shall be holden for none, but that he may be hanged, notwithstanding his pardon; for by the pardon, the offence, *regitur, non tollitur*. See the Statute 10 *E. 3. c. 3. P. Pardon. 5. & 3 H. 7. 7.* where one was executed upon this Statute, for making an affray after his pardon. *Br. Coron. 134.*

27 H. 8. 14.  
P. Prec. 17.

None have authority to pardon any treason, murder, or other felony, or any accessory to the same, save onely the King; it being one of his Royall Prerogatives.

## Manſlaughter. CAP. 94.

**M**Anſlaughter in the right ſignification thereof implieth all manner of Homicide, and is the generall, as well to murder as to the reſt: Ne- yertheſſe for that in common ſpeech it is reſtrained to manſlaughter by Chancemedley alone, in that ſence I will here write of it.

Manſlaughter, otherwiſe called Chancemedly, is the killing of a man feloniously, ſc. with a mans will upon preſent heate, and yet without any malice forethought; as when two doe quarrell and fight together upon the ſudden and by meere chance, without any malice precedent, and one of them doth kill the other, this alſo is felony of death. *Pl. 101. Br. Coron. 222.*

And yet in caſe of manſlaughter (not being within the ſtat. of 1 Jac.) the offender ſhall have the benefit of Clergy: and by the law of God, there was a city of refuge appointed for ſuch to flie unto. *Exod. 21. 13. Deu. 19. 34.* For in ſuch caſes of chance (as we terme it) ſc. where the offendor hath not laid wait, nor hated in time paſt, the ſame Scripture ſaith, that God offered the party ſo ſlain into the hands of ſuch manſlayer.

Two fall out upon the ſudden, and fight, and the one breaketh his wea- *from 16.* pon, and a ſtranger ſtanding by (yet being none of their company) lendeth him a weapon, and therewith hee killeth the other; this is manſlaughter as well in him that killed the other, as in the ſtranger, who lent him his weapon.

*A.* and *B.* fall out upon a ſudden, and fight, and *A.* is ſo fierce, that he runneth upon the others weapon, and is ſlain, yet this ſeemeth manſlaughter in *B.* for he ſhould have fled to ſome wall or ſtraight, &c. *Quere.*

And if *B.* had fled to the wall &c. and *A.* purſueth him, and *B.* perceiving that *A.* would aſſault him, holdeth his weapon betweene them, and *A.* runneth upon the weapon, and is ſlaine, this is Homicide in his owne defence, and for which *B.* ſhall forfeit only his goods: but otherwiſe it had beene if *B.* had fallen, and lying upon the ground, had drawne his knife or dagger, and *A.* falleth thereon, and ſo is ſlaine; for then *B.* could not flie, nor make any other defence for his ſafety, and therefore here *B.* ſhall not forfeit his goods, nor be culpable of his death, but be diſcharged: for *A.* in manner killed himſelfe. See hereof *poſtea, & cap. 92.* *P. R. 133. b. Stamf. 16. a.*

Two combat together upon the ſudden, and part, and preſently after meete and fight againe, and the one killeth the other: or the one preſently fetcheth a weapon, and commeth and killeth the other; theſe ſeeme but manſlaughter, for that it is done all in one continuing fury, which was at the firſt without malice, and could not in ſo ſhort time be appeaſed, or aſ- ſwaged. *Crompt. 23. b. 24. a. 26. a. b.*



Lamb. 246.

So if two have borne malice the one to the other, and be reconciled, and after meeting againe, they fall out upon new occasion, and by agreement immediately they goe into the field to fight, and the one killeth the other, this seemeth but manslaughter. (*causa qua supra*) unlesse the respite or distance of time or place had been such, that by reasonable conjecture their heat might be asswaged.

• See more of manslaughter before in Murder, and after in Misadventure.

*What persons are chargeable with Homicide, and what not.* CAP. 95.

Non compos mentis.

Fitz N.Br.

201.

21 H. 7:33.

Plo. 19.

Co. 4. 124.

**I**F one that is *Non compos mentis*, or an ideot, kill a man, this is no felony; for they have not knowledge of good and evill, nor can have a felonious intent, nor a will or mind to doe harme: And no felony or murder can be committed without a felonious intent and purpose; for it is called *Felonia, quia fieri debet felleo animo*. Co. 4. 124. b.

And againe, *actus non facit reum, nisi mens sit rea*; and a mad man is *Amens*; *id est, sine mente*, without his mind or discretion, and is only, and enough punished by his madnesse. Co. L. 247.

So it is, if a lunaticke person killeth another during his lunacie, it is no felony; (*Plo. 260.*) for all acts done by him in his lunacie, are as the acts of an Ideot. Co. 4. 125.

*Vncr. tiels persons serra puny in Trespas pur hurt fait al corps du'auter.*

If another man shall upon malice procure a mad man to kill another, though the mad man shall be excused, yet the incitor or procuror shall be punished as a principall. Ba. 57. *Vide hic. cap. 108.*

Now there be three sorts of persons accounted *Non compos mentis*, to this purpose, and the like.

Co 124.

1 A foole naturall, who is so (*a nativitate*) from his birth; and in such a one there is no hope of recovery.

2 He who was once of good and sound memorie, and after (by sicknesse, hurt, or other accident, or visitation of God) loseth his memory.

3 A lunaticke, *qui gaudet lucidis intervallis*, and sometimes is of good understanding and memory, and sometimes is *non compos mentis*.

Infant.

An Infant of eight yeares of age, or above, may commit Homicide, and shall be hanged for it, *viz.* if it may appeare (by hiding of the person slain, by excusing it, or by any other act) that he had knowledge of good and evill, and of the perill and danger of that offence. See 3. H. 7. 1. & 12. *Stamf.* 27. *Fitz. Coron.* 118. 129. & *Br. Coron.* 133. 136.

And

And yet Sir *Edw. Coke* upon *Littleton, fol. 247.* saith, that it is of an Infant, untill he be of the age of fourteene yeares (which in law is accounted the age of discretion) as it is with a man *Non compos mentis*; and that in criminall causes (as felony, &c.) his Act and wrong shall not be imputed to him, for that *Actus non facit reum, nisi mens sit rea; &c.* Sir *Fr. Bacon.* 38. accordeth.

But an Infant of such tender yeares, as that hee hath no discretion or intelligence, if he kill a man, that is not felony in him. 3 *H. 7. 1. b.*

If one that is dumbe killeth a man, it is felony: yet *quare* how he shall *Plow. 19.* be arraigned.

A man borne deafe and dumbe, killeth another, that is no felony: for *F. Coro. 193.* he cannot know whether he did evill or no; neither can he have a felonious *Stimf. 26.* intent, &c. See hereof *tit. Surety for the peace antea, Cap. 68.* Otherwise if he were not so borne, but becometh so afterwards. See *Br. Coro. 101. & 217.* that a man which can neither heare nor speake may commit felony, and shall be imprisoned, &c.

Yet note in these former cases of Homicide, committed by persons being *Non compos mentis*, or wanting discretion, such things happen by an involuntary ignorance, and therefore the law accounteth such act of theirs to be no felony.

But if a man that is drunke, killeth another, that is felony of death, for it is a voluntary ignorance in him, in as much as such ignorance cometh *Plow 9* to him by his owne act and folly. Sir *Edw. Co. L. 247.* calleth a drunkard, *voluntarius Demon*, and saith that such a one hath no priviledge thereby, *Co 4 135.* but what hurt or ill soever he doth, his drunkenness doth aggravate it.

Misadventure. CAP. 96.

**B**Y the Statute of *Marl. cap. 25.* killing a man by misfortune onely, shall not be adjudged murder.

Now Homicide by misadventure or misfortune, is when any person doing of a lawfull thing, without any evill intent, happeneth to kill a man casuall; by the Law of God there was a City of refuge appointed for such person to flie unto, *Numb. 35. 15. & 22. Iosh. 20. 3.* for such an act happening in such sort, seemeth to bee the worke of God himselfe; See *Prov. 16. 33. & Exod. 21. 13.* And by our Law now, this is no felony of death, neither shall there be any judgement of death given upon him; but he shall have his Pardon of course for his life and his lands; yet he shall forfeit his goods, in regard that a subject is killed by his means. See *Stamf. 16. a. b. Fitz. Coron. 69. 302. & 354. Br. Forf. 9. & Co. 5. 91. b.*

Sec Exod.

21. 20. 21.

Stamf. 12 c.

As if a Schoolemafter in reasonable manner beating his scholler, for correction onely, or a man correcting his child, or servant in reasonable manner; and the scholler, childe, or servant happen to die thereof, this is Homicide by misadventure. *Cro. 136.*

So if a man shooting at Buts, prickes, or other lawfull marke, and by the shaking of his hand, or otherwise against his will, hee killeth one that standeth or passeth by, 21. *Hen. 7. 29. Rede 6. Ed. 4. 7. Br. Coron. 59. & 148.*

So if a Carpenter, Mason, or other person doth throw, or let fall a stone, tyle, or peece of timber from an house, or wood, or other thing from a cart, &c. (and giveth warning thereof) and another is killed thereby against his will. 21. *H. 7. Br. Coron. 59.*

6. Ed. 4. 7.

F. Cor. 398.

Pl. 19.

So if a labourer that is felling, or cropping of a tree, and the same, or part thereof, falleth and killeth a man.

So if the head of his hatchet, or other tooke falleth from him, and happeneth to kill one standing by, *Deut. 19. 5.* accordeth.

11 H 7. 23.

Sec Br. Cor.

229. contra,

So if a man be (in due and convenient time) doing any other lawfull thing, that may breed danger to such as passe by, and shall give warning thereof, so that such as passe by, may heare and flye the perill, and yet another passing that way shall be killed therewith.

And so if men shall run at Tilt, Just, or fight at Barriers together by the Kings commandement and one of them doth kill another, in these former cases and the like, it is misadventure, and no felony of death.

CAS. 61.

And yet in such cases of Misadventure, as also where one killeth another *Se defendendo*, by the Common law these offences were felony of death, and the offender should have died for the same; but now by stat. such offenders are to have Pardon for their life and lands, yet their goods remaine forfeit as before (at the common law.) See the stat. 6. E. 1. c. 9. & 2. E. 3. c. 2. 21. E. 3. fol. 17. Br. Co. 40. & for. 9. 13. 15.

Fitz. 246.

&amp; 248. b.

Br. Cor. 1.

Sec stat.

6. E. 1. 9.

4. H. 7. f. 2. 2

Reg. f. 309.

Also in these cases of misadventure, and in the former cases of homicide committed by Infants, and other persons, being *Non compos mentis*, as also where one killeth another in defence of his person; they shall bee discharged in this manner, *sc.* if they desire to purchase their pardon, they must upon their triall, plead not guilty (and shall give in evidence the speciall matter) and then this speciall matter being found by verdict, they shall be bailed, and then they must sue forth a *Certiorari*, to have this record certified to the Lord Chancellour of England, who thereupon shall make them a Charter or Pardon of course under the great Seale, without speaking or suing to the K. for it. See *Stamf. 15. c.*

Unlawfull

18.

But if a man bee doing of an unlawfull act, though without any evill intent,



intent, and he happeneth by chance to kill a man, this is felony, viz. manslaughter at the least, if not murder, in regard the thing he was doing, was unlawfull. *Finch. fol. 75.*

Stamp. 162.

As shooting of arrowes, or casting of stones into an high way, or other place, whither men doe usually resort.

Stamp. 120

So of fighting at Barriels, or running at Tilt or Justs, without the Kings commandement, whereby a man is slain: and although it were by the Kings commandement, yet it was holden felony by the Just. *tempore H. 8.*

11. H. 7.  
Br. Cor. 2. 9.

Playing at hand-sword, bucklers, football, wrestling, and the like, whereby one of them receiveth a hurt, and dyeth thereof within a yeare and a day; in these cases, some are of opinion, that this is felony of death: some others are of opinion, that this is no felony of death, but that they shall have their pardon of course, as for misadventure, for that such their play was by consent, and againe there was no former intent to doe hurt, nor any former malice, but done onely for disport, and triall of manhood.

11. H. 7. 25.  
Crom. 26. b.  
Cro. 29. a.  
Cro. 118.  
136.

P. R. 12.

A man casting a stone at a Bird, or beast, and another man passing by, is slaine therewith, *quere* whether this be manslaughter, or but misadventure. The opinion of *Finch* chiefe Justice in 11. H. 7. fol. 23. is, that if a man cast a stone over a house, and killeth a man, this is no felony, but misadventure: But *M. Brooke* abridging this case, saith, it seemeth to be no law, but where the casting of a stone is lawfull, as where a Mason is untyling of a house, &c. but to cast it for pleasure, and not in lawfull labour, seemeth to bee felony; and so was the opinion of *M. Bracton* and *M. Stamford*.

Fitz Cor.  
302 & 354  
Sec Nun. b.  
35. 23.  
Br. Cor. 129.  
Cro. 108.  
1. 6.Stamp. 120.  
16. c.

## Casuall Death. CAP. 97.

**A**Lso a man may bee slaine by other casualty, than by the hands or meanes of another man; as by the fall of a house, pit or tree, &c. upon him; or be killed by a Bull, Beare, or other beast, or by a horse, or Cart, &c. or be killed by some fall, which he himselfe taketh.

And in these and the like cases, observe these rules.

1. First if a man be slaine in any such manner, yet if it be by the meanes, or procurement, or wilfull default of another man, this shall be felony in the party procuring or causing it.

2. The thing which is the cause of such casuall death shall bee forfeit to the King, taken for a *Deodand*, and distributed in almes by the Kings Almner for *Deodand, est quasi Deo dandum, id est, in Eleemosinas erogandum.* But the Almner hath no interest, as it seemeth, in such goods, but hath only

the disposition of the Kings almes, *durante bene placito*, so that the King may grant them to any other. See *Co. 1. 50. Dyer 77.*

The office and duty of this Almner. See *Co. 1. 94.*

*Plo 160.*

3 The forfeiture shall have relation from the stroke given; so as the party or owner selling thereof (sc. of such thing as was cause of such death) after the stroke given, taketh not away the Kings right, but that he shall have it as forfeited, notwithstanding such sale.

*Co. 5. 110*

4 *Deodands* are not forfeited untill the matter be found of Record, and therefore they cannot be claimed by prescription.

*Co. 5. 110.*

*F. Cor. 298*

*Stamf. 121.*

*P. Cor. 10.*

5 The Jury which find the death of the man, must also find and appraise the *Deodand*, and the Sheriffe shall be charged with the price of such *Deodand*, and shall levy the same of the towne where it falleth, although it were not committed to the towne to keepe: and therefore it behooveth the towne to see it forth-comming. See the Statute *de officio Coronatoris*, 4. Ed. 1.

*P. Cor. 389.*

*Stam. 21.*

*F. Indist-*

*ment 27.*

*Stamf. 21.*

6 If he that is so slaine be under 14 yeares of age, nothing shall be forfeit to the King as a *Deodand* for him, as it seemeth.

And if a man that is unknown be found dead in the field, his apparell and money about him shall be given to the poore, &c. And if he were knowne, then his goods shall bee delivered to his Executors or Administrators, or to the Ordinarie; but shall not bee taken as a *Deodand*, in either case (for they are not of the nature of a *Deodand*) they being no cause of his death.

*Deodand,*  
*quid.*

*Dyer 77.*

*Co. 5. 110.*

Next what shall be forfeited and taken for a *Deodand*; The old rule is, *Omnia que movent ad mortem, sunt Deodanda*: And yet besides *Deodands* may be of some things that a man shall move or fall from, though the thing it selfe moves not: as to fall from a ship, cart, inow of corne or hay, &c. So as *Deodands* are any goods which doe cause, or are occasion of the death of a man by misadventure. *Co. Ibid.* See more. *Fitz. Cor. 314. 326. 341. 342. 348. 388. 389. 398. 401. 409.*

*Br. fof. 112.*

If a man killeth another with my sword (or other weapon of mine) my weapon shall be forfeit as a *Deodand*: for it shall be adjudged my fault, that I did not keepe my weapon from him. *Doff. & St. fo. 156. b.*

If I shall lend another man my sword or other weapon, knowing him to be minded to goe fight, or make an affray therewith, and he with my weapon in such fight or affray, killeth one, *quare* if this be not felonie in me: for you shall find that an Abbot that lent a bow and arrowes to another, to the intent to kill the Kings Deere, was therefore fined and ransomed. *Crompt. Auther. des Courts, fol. 191.*

The inquirie of such casuall death, belongeth also to the Coroner:  
but

but if the Coroner cannot have the sight of the body and so cannot inquire thereof, *quare* how the King shall be intruded to the goods, *vide hic cap. 92. fine.*

*Homicide upon necessitie.* CAP. 98.

SOMETIME the Justice of law commandeth a man to be put to death, As <sup>Commanded.</sup> When the Judge hath pronounced sentence of death against an offender (attainted by due course of law) there in execution of Justice) an officer or other person thereto lawfully deputed, may orderly execute such judgement or sentence according to his Warrant; and such sentence or judgement pronounced by the Judge, and after lawfully executed by the officer, leaveth the name and nature of murder and homicide, and is called Justice, or rather Judgement, which is the lawfull execution of Justice.

But if the officer, or other person, shall proceed therein upon his owne <sup>Stamf. 13.</sup> authority, without warrant, or *Non observato ordine juris*; as where an offender hath judgement given upon him, to bee hanged, if the Sheriffe or other officer, &c. shall behead him, or by other meanes put him to death, this is felony in such officer &c. *Co. 7. 14.* <sup>See Doff. & Stu fol. 133.</sup>

Also if a stranger being not thereto lawfully deputed, shall (upon his owne authority) put to death an offender that is condemned to dye, this is felony. See *Co. 7. 14. a.* <sup>Stamf. 13.</sup>

Nay if the Judge himselfe, who gave the judgement of death upon an offender; shall after put the same offender to death, it is not justifiable by him.

If the Justices of peace shall arraign a man of treason before them at their Sessions, who is found guilty &c. and thereupon is hanged; this is felony as well in the Justices, as in the Sheriffe or officer which shall hang him; for that the Justices of peace had no authoritie therein, but it was *coram non Iudice. Lecture M. Cocke.* See also *Co. 10. fol. 76.*

If the Justice of peace shall arraign a man of felony, upon an Enditement of trespassse, whereupon hee is hanged, this is felony in the Justices, but not in the Sheriffe or Officer, *Lecture M. Cocke.* The difference betweene these two cases appeareth in my Lord *Cookes Reports, lib. 10. f. 76. sc.* for that in this last case the Justices of peace had jurisdiction of the cause, and therefore although they proceeded *inverso ordine*, or erroneously, yet the officer is excusable.

Sometimes also the Justice of Law, tolerateth and suffereth a man to be <sup>Tolerated.</sup> slaine. *sc.* for the necessarie execution and advancement of Justice which otherwise



otherwise should be left undone : And in such case the law of the Land imputeth not it as any fault to him that shall so kill a man, but freely discharge him thereof without the Kings pardon,

*F. Cor. 262.  
Stamf. 12.*

As a Sheriffe, Bailiffe, or any other person who hath a lawfull Warrant to arrest a man indicted of felony, may well justifie the killing of him, if he will not suffer himselfe to be arrested, and yeeld himselfe, and that they cannot otherwise take him. See 22. *Aff. 55. & Fitz. Cor. 288. & 328.*

*F. Cor. 263.  
Stamf. 13.*

And so every person whatsoever, without any warrant, may apprehend a felon upon huy and cry, or otherwise : and if he will not yeeld to be arrested, but shall resist or flie, the persuer may kill him without blame. See *Fitz. Coron. 328. & Co. 5. 109. b.*

Herewith also agreeth the Doctor and Student, *lib. 2. cap. 41.* saying, If any person that is no officer, would arrest a man that is outlawed, abjured, or attainted of murder, or any other felony, and such offender shall disobey the arrest, and by reason of that disobedience hee is slaine, the other shall not be impeached for his death ; for it is lawfull unto every man to arrest, and take such persons, and to bring them forth, that they may be ordered according to the law.

*P. Cor. 288.  
& 328.*

An offender in felony is led towards the Gaole, and breaketh away from those that conduct him, and maketh resistance, or flyeth ; his conductors may justifie to kill him, if they cannot otherwise take him againe.

*22. Aff. 35.*

A prisoner in the Gaole attempteth to escape, and having broken his irons, striketh the Gaoler (coming in the night to see his prisoners) and the Gaoler slayeth such a prisoner, this is no felony.

*Cro. 24. 62.  
30. & 158.*

Rioters, and such as shall make any forcible entrie, or detainer, against the statutes, if they shall resist the Justices of peace or other the Kings officer, or shall not yeeld themselves, but shall stand at their defence, when the Justices of peace, or other officer shall come to arrest or remove them, if any of them happen to bee slaine, this is no felony in the Justice of peace, or officer, or in any of their company that killed such Rioters, &c. *Lambt. 310.*

*Stamf. pre-  
rog. fol. 46.  
Cro. 24. 38.  
Doff. & St.  
133. b.  
Stamf. 13. e.  
f. g.*

The Sheriffe, Bailiffe, or other officer commeth (by vertue of the Kings proceffe) to arrest another for debt, or trespassse, who maketh resistance, and thereupon is slaine by such officer, or any of his company, this hath beene taken to be no felony, *tamen quare*, what the law is at this day ; for although the Sheriffe (being the Kings officer) ought to see the Kings commandement to be executed, yet that must be understood to be executed by all lawfull meanes and wayes.

But in all these former cases there must be an inevitable necessity, *sc.* that the offender could not be taken, &c. without killing of him.

Also

Also in an appeale of Felony, if the appellant and appellee doe joyne to try it by battell, and therein one doth kill the other; as the law doth allow such triall, so doth it allow the event to be justifiable, as depending upon the Judgement of God, who giveth Victorie according to Truth. 37. 7. 6. 21.

So a man as a champion in triall upon a Writ of right, if he killeth the other, this is no felonie. *Plø. 9. 6.*

Also, when one man killeth another in the necessary defence of himselfe, or his, thereby to deliver himselfe, his possessions, or his goods, or some other persons, which he is bound to defend from perill, and which cannot otherwise escape, this is Homicide tolerated upon necessitie. As *Se defenden- do tolerated.*

To kill an offender, which shall attempt feloniously to murder or rob mee in my dwelling house, or in or neere any high-way, cart-way, horse-way, or foot-way, or that shall attempt burglary, or feloniously to breake my dwelling house in the night; this is justifiable by my selfe, or by any of my servants, or company, whom the said evill doers shall so attempt to rob or murder; or by any person being in my dwelling house, which the same evill doers shall attempt so to breake by night. 24. H. 8. c. 5. P. Forf. 1. 113. Co. 5. 113. & 11. 82. Exod. 22. 2.

And this being so found by verdict upon triall, we shall be all discharged without losse of life, lands, or goods, or pardon. *24. H. 8. cap. 5. Stamf. de Prærog. 46.*

To kill a theefe or murderer, ( *sc.* one which goeth about to rob, or murder me ) in the defence of my person, my house, or goods, was no felony, but justifiable by the common law, before the statute of *24. H. 8. c. 5.* (which statute doth also declare the Law to be so, and doth enact it ) *Stamf. 14.* See *Co. 5. 91. & 11. 82. Br. Coron. 100. 102.* And yet at the Common Law there was this difference, *sc.* that he which killed a theefe which would have robbed him upon the high way, should forfeit his goods; but hee which killed one who would have robbed or murdered him in his house, should forfeit nothing. *Co. 11. 82. See Exod. cap. 22. 2. 3.* 26. Aff. 32. F. For. 161. 305. & 350.

And if one, or moe come to burne my house, I, or any of my servants, may justifie to shoot forth of my house at them, or may issue forth, and to kill them, for such intent of theirs is felonious. *Br. Coron. 100.* 20. Aff. 22. Finch.

If a woman kill him that assaileth her to Ravish her, this is justifiable by the woman without any Pardon. *Sir Fr. Ba. 34.* 113

If divers bee in danger of drowning by the casting away of a boate or barge, and one of them gets to a plancke, or on the boates side, to keepe himselfe above the water, and another to save his life thrust him from it, whereby he is drowned, this is neither *se defendendo*, nor by misadventure, yet justifiable. *Idem 30.*

But if a man shall forcibly get, and keepe possession of a house, and the

other shall come in the night and fire this house, they within cannot justifie to shoot and kill him, or any of his company, for that they in the house were there unlawfully. See *Crompt. 26. b.*

*F. Cor. 305.*  
*Co 5 91.*

If one commeth ( in the day time ) to my house, to beat mee, and doth make an assault upon me in my house, and fighteth with mee, and I kill him in defence of my person, yet in this case I shall forfeit my goods, and must have the Kings pardon, except it be found, that the assailant came with a felonious intent to kill or rob me,

And if one commeth ( in the day time, or in the night ) to enter into my house, pretending title thereto, and to put me out of my possession, and I kill him, this seemeth to be manslaughter in me.

*Stamf. 15. a.*  
*Speculum*  
*lib. 6.*

Note if one kill a true man, in defence of his person, there ought to bee so great a necessity, that it must be esteemed to be inevitable, or otherwise it will not excuse, but it is felony although that the other pursues him : and therefore he that shall be assaulted by a true man, must first flie as farre as he can, and till he be letted by some wall, hedge, ditch, presse of people, or other impediment ; so as he can flie no further without danger of his life, or of being wounded or maimed : and yet in such a case, if hee kill the other, he shall be committed till the time of his triall, and must then get his pardon for his life and his lands, ( which pardon notwithstanding he shall have of course ) but he shall lose and forfeit his goods and chattels, for the great regard which the Law hath of a mans life. *Fuz. Coron. 116. Co. 5. 91. b.* See hereof *paulo antea tit. Felony by Misadventure.*

The penal-  
tie.

*Co 5 91.*  
*4 H 7. 1.*

*6 E 1 c 9.*  
*P. Pardon 1.*

*113*  
*Stamf. 15.*

*A.* maketh an affray upon *B.* and striketh *B.*, and *B.* flyeth so farre as he can for saving his life, before any stroke given by *B.* and *A.* continueth his assault, whereupon *B.* doth also strike *A.* and killeth him, this is Homicide in his owne defence : otherwise it seemeth to some, if *B.* had stricken the first blow, or had stricken before hee had fled : and yet by other good opinions the first stroke, or who began the affray, is not materiall, but the whole matter will consist upon the inevitable necessitie ( *sc.* whether the said *B.* who killeth *A.* could not have escaped with his life, &c. without killing *A.* ) for otherwise it will not excuse *B.* for *cuncta prius tentanda*; and as it is a charitable, so it is a safe principle ( in these cases ) not to use an extremity, till thou hast tried all meanes.

*F. Cor. 84.*  
*Co 186*  
*Stamf. 15.*

Also it is holden in the former case, if *B.* ( before he had fled ) had stricken *A.* and given him divers wounds, that yet if hee flie to a streight before he give *A.* the mortall wound, and then he giveth his deaths wound, this is homicide in his own defence.

*F. Cor 387.*  
*Crompt 12*  
*28 b.*

But in the former case, if *B.* upon malice prepenced had first stricken *A.* and then *B.* flieth to a streight or wall, and *A.* pursueth him, and striketh him,



him, and B. killeth *A.* thereupon, this is murder in *B.* for the malice pre-  
penced was the ground and beginner hereof.

Yet if there had beene former malice betweene *A.* and *B.* and they meet  
suddenly, and *A.* assaulteth *B.* and *B.* before any stroke by him given fly-  
eth so far as he can, and *A.* pursueth him, and then *B.* killeth *A.* this seemeth  
to be homicide in his own defence notwithstanding the former malice.

*Copstones case* : There was malice betweene *Copstone* and one *S.* and they <sup>15 El</sup>  
had fought divers times, and after met suddenly in *London Street*, and *C.* <sup>Cromp. 27.</sup>  
told *S.* that he would fight with him, and *S.* answered that he had nothing  
to say unto him, and *S.* went to the wall, and after *C.* assaulted *S.* and then  
*S.* struck and killed *C.* and it was found that *C.* began the affray, and *S.*  
was thereupon discharged without forfeiting any thing : But that was by  
force of the statute 24. *H. 8. ca. 5.*

A man in fight falleth to the ground, there his flying, &c. is not necessa-  
ry, &c. see hercof before.

Also if a theefe assaults to rob or kill mee, I am not bound to flie to a *Stamf. 14.*  
wall, &c. as I must in case a true man assaults me.

If an officer of Justice, or Minister of the Law, in the execution of his <sup>Co. 9 98.</sup>  
office, be assaulted, he is not bound to flie to a wall, &c. as other subjects are.

Also the servant may justifie the killing of another, in defence of his ma- <sup>21. H. 7 39.</sup>  
sters person or house, if the hurt cannot be otherwise avoyded. *Br. Coron. 63.*

Also the servant may justifie the killing of him, who robbed and killed  
his master, so that it be done presently.

In the defence of the possession of my goods, I may justifie to beat him  
that shall wrongfully take them from me ; but I cannot justifie to kill him,  
except he be a theefe.

So then to kill a true man in defence of my person, in case where there is <sup>31. Ed. 1.</sup>  
inevitable necessity, ( *sc.* that I first shall flie so far as I can for saving my <sup>P. Fort. 4.</sup>  
life, &c. ) this is no felony of death, &c. But otherwise it is to kill a true <sup>Stamf. 13. 14</sup>  
man in defence of my house, lands, or goods, that is manslaughter (at least)  
as it seemeth.

If any forrester, park-keeper, or warrener, or any in their company,  
shall kill an offender in their Forrest, Parke, or Warren, which ( after huy  
and cry levied to keep the peace. and to obey the law ) will not yeeld them- <sup>Cromp 30.</sup>  
selves, but will flie, or defend themselves by violence, this is no felony : Yet  
*quare* ; if there were any former malice in such Keeper. But if any such  
Keeper by reason of any former malice, will lay to any mans charge, that  
he came to doe hurt, whereas he did not. neither was found wandring nor  
offending, and so kill him, this is felony in such keeper.

And so in the former cases where a man is slaine for the execution of  
Justice,

Justice, *sc.* where the offender shall disobey the arrest, resisteth, or flieth, and so is slaine : as also where any man shall bee slaine by an officer, or other person, in keeping or preserving the peace ; yet if such Manslaughter, or killing of such an offender be committed wittingly, willingly, and of purpose, under colour of execution of Justice, or keeping of the peace, this is felony. See the stat. 1 *Iac. Regis, cap. 8.*

## Burglary. CAP. 99.

21 E. 3.  
18. E. 6.

**B**urglary in the naturall signification, is nothing but the robbing of a house ; but in our Law it is taken to be when one or more in the night time, doe breake a dwelling house, or a Church, or the walls or gates of a City, or walled Towne, with an intent to rob or to doe any other felony, although he or they take or carry away nothing, yet it is felony of death, and the offenders shall not have the benefit of their Clergy. *Dyer 99. Stamf. 30. Fitz. Coron. 185. 364.*

The times.  
*Br. Cor. 185.*  
*Stamf. 30.*  
*Co. 11. 6.*  
*21 H. 7.*  
See the title Watch

First for the time : Burglary cannot be committed in the day time, but onely in the night, for all indictments of Burglary, bee, *Quod noctanter fregit* ; And the night ( to this purpose ) beginning at the sun-setting, and continueth to the sun-rising : And therefore to breake a house, &c. after the sun-setting, and before it be darke ; or after day light in Sommer, and before the sun-riseth, is Burglary.

The manner.  
*Stamf. 30.*  
*Dyer 99.*  
*Br. Cor. 186.*

Next, for the manner : It is holden ( by some good opinions ) that if a man break the house to do felony, and yet entreth not, it is no burglary ; and that the Indictment must be *fregit & intravit*. And yet by the opinion of *Shard 27. Aff. 38.* and by the opinions of Sir *Anth. Browne*, Sir *Edward Montague* and Sir *Rob. Crooke*, late chiefe Justices of the Common pleas and others, (as *M. Crompton* reporteth) if a man doe but attempt or enterprise to break or enter into a dwelling house by night, to the intent to rob, or kill any person there, though he make no actuall entry, yet it is a full and compleat Burglary : for in such cases, *Voluntas reputabitur profecto*.

*Crompt 11.*  
*32 33.*

As to put backe the leafe of a window with his dagger.

To draw the latch of the doore.

To turne but the key, being on the inner side of the doore.

So to breake the glasse window, and to draw out any goods there with a hooke, &c. *26. El. at Staff. Assises.*

So to breake a hole in the wall, and to shoot in thereby at any within the house.

*16. El.*

So ( the doore being opened by some of the house ) if any the attempters shall discharge a dagge against any in the house, and in discharging his

his dagge shall hold his hand over the threshold, though hee set no foot over.

So if upon an attempt of Burglary, they within the house shall cast out their money for feare, and the attempters take it away.

And yet there is no actuall entry made, in any of these cases.

But if a theefe setteth but his foot over the threshold, or into any part of the house to commit felony, or shall for that purpose but put his hand in at the window, or at any hole in the wall, this much more shall convict him of burglary.

Also one being let downe the chimney in the night to commit felonie, *Crom. 32.* it was adjudged Burglarie by sir R. *Mamwood*, chiefe baron, and yet he broke not the house.

So it is to come into the house by the helpe of a key,

So if suddenly one come into the house by night, the doores being open, and the owner flieth to his chamber, and the offender is taken shoving at the chamber doore.

So is it if theeves pretending that they be robbed &c. shall come to the Constable, and pray him to make search for the felons, and going with the Constable into a mans house to search, they robbe the good man of the house, this is burglary.

So if a servant conspiring with another to robbe his master, shall open his masters doore or window in the night, and the other entereth thereat, this is burglary in the stranger, by the opinion of Sir *Roger Mamwood*: And the servant is but a thiefe and no burglar. *21. EL. Termes 34.*

And yet the house was not broken in any of these cases.

If a theefe find the doore open, and commeth in by Night and robs the house, and be taken with the manner, and breakes a doore to escape, this is Burglary; yet the breaking of the doore was without any felonious intent; But it is one entire act. Sir *Fr. Ba. 65.*

But if one commeth into my house in the day, and there hideth himselfe till night, and then robbeth me, or if I shall lodge one in my house, and in the night he robbeth me; (*sc.* goeth out of my house, and taketh away some of my goods with him,) yet this is no burglary, for that he broke not my house: for the first case it was so holden at *Derby. Aff. 32. EL. Cromp 34.* See *hic postea. Quare* of his opening the doore to goe out and escape if that shall not make it Burglary.

Also if divers come to commit burglary, and but one of them entereth and commit it, the rest standing about the house, or not farre off, to watch that no helpe shall come; this is burglary in all that company. *II H 4 13.*

But Master *Finch (lib. 2.)* describeth burglary to be the breaking and en-



try of a house in the night, with a felonious intent to kill, or steale, although no man be killed, nor any thing stolne.

**The place.** Now concerning the place, it may be either publique, or private; publique as the Church, or walls, or gates of a city, or walled towne; private, as a dwelling house: and here commonly it is no burglary, unlessse some person be at that time within the house.

And yet *An. 36. El. termino Pasch.* at an assemblie of all the Justices at Serjeants Inne; it was resolved, that the breaking of a house in the night with an intent to commit felonie, is Burglarie, although that no person bee within the house; for the law is, that every man ought to be in securitie or safety in the night; as well for their goods, as for their person; and that the ancient presidents are, *Quod domum noctanter, felonice & burg. fregit*, without saying *domum mansionale*, or that any person was in the house; and that the reason why of late times these words have beene put into the indictment (*sciz.* that some person was in the house) was, for that in such cases the benefit of Clergy was taken away: but now by the statute 18. *Eli. cap. 6.* Clergy is taken away in all cases of burglary; and therefore the Judges then all agreed from thenceforth to put the same in execution accordingly. I have seen this thus reported out of a booke of *Pophams*, late Lord chiefe Justice of the Kings Bench.

*Co. 4 40.* And if a man hath a dwelling house, and hee and all his family (upon some occasion) are part of the night out of the house, and in the meane time one commeth and breaketh the house to commit felonie, this is burglary.

*Co. 4 40.* So if a man hath two dwelling houses and sometimes dwelleth at the one and sometimes at the other, and hath a family or servants in both, and in the night when his servants are out of the house, the house is broken by theeves, this is Burglary. Adjudged 38. *Eli.*

I have also seene a report of Judge *Pophams*, that *termino trinit. 36. Eliz.* it was resolved by the Judges, that if a man had two houses, and dwelt sometimes in the one, and sometimes in the other, if that house wherein hee neither then was, nor had any servants, were broken &c. that this was Burglary, although no person then dwelt or were therein.

*Crompt. 22.* If one breaketh a Chamber in Lincolnes Inne, (or in any other house of Court, or Chancerie, or in any Colledge in Cambridge, or Oxford, &c.) in the night, to the intent to commit felony there, this is Burglarie, although there were no person in the same Chamber; for that Colledges and houses of Court and Chancery bee entire houses, whereof such Chamber is parcell; so that if any person shall bee in any other Chamber within the same House or Colledge at the same time, it is Burglary.

One P. was arraigned of Burglary, *An. 22. Eliz.* for that hee assaulted one of his companions of the Inner Temple, London, in his Chamber there to have killed him in the evening, &c. but had his pardon. *Crompt. 31.*

A servant who lyeth continually within his masters house, openeth the doores of his masters house in the night to rob him, this is burglary, *Leet. Mr. Cock, tempore H. 8. See hic antea.*

A man commeth as a guest to eat or drinke in the day time, and there stayeth till night, and in the night time breaketh his chamber or any part of the house to rob his host, this is burglary. *Ibid.*

A guest commeth to a common Inne, &c. and the host appointeth him his chamber, and in the night the host breaketh into his guests chamber to rob him, this is burglary. *Ibid.*

Also the breaking (in the night) of a stable, barne, or other out house adjoining to, or parcell of, or neere to the dwelling house to the intent to steale, is burglary, though he take nothing. *Fi. Libro. 2.* *2 Ed. 6. Br. Cor. 180. Lamb. 356.*

At Sommer Assises at Cambridge, *anno Dom. 1616.* two men were arraigned and condemned for burglary before Sir *James Altham*, knight, for robbing a backhouse of *Robert Castle* Esquire, in the night, which backhouse was some 8 or 9 yards distant from his dwelling house, and only a pale reaching betweene them: so that though this offence be not committed in the very body of the dwelling house, but in some other house neere unto it, and being parcell of or belonging to the dwelling house, it is burglary. *Co. II. 37.*

But a booth or tent in a Faire or Market, are not esteemed in law for a dwelling house, nor the breaking thereof in the night time to be burglary; although the robbing of them be made as penall as burglary, if the owner, his wife, children, or servants, were within the same. *12 Aff. 95. Stamf. 30. 126. Co. II. 31.*

Lastly (to make it Burglary) the purpose and intent for which the offender commeth, must of necessitie be, to kill, or rob some person. (or to commit some other felonie) otherwise it is neither burglary nor felonie. *The intent.*

And therefore to breake a house in the night, to the intent to kill any person therein, it is burglary, although he never touch him. *13. H. 4. 7 F. Cor. 267.*

So it is, if the purpose were to rob, although the offender taketh away nothing. *Fi. Cor. 185. 264.*

But if a man breake and enter an house by night, of purpose only to beat a man, that is but trespassse. *Abr. d. Aff. 75. Stamf. 30. Co. II. 31.*

And if the intent were to commit a Rape, which some thinke to be no felony by the common law, but only a trespassse, then there is some doubt, saith *M. Lambert*: And *M. Crompton* saith, that if a man breaketh another mans house in the night, and ravisheth a woman there, this is no burglary; *Lamb. 260. Crompt. 32.*

for,

Stamf 21.  
22. & 23.

Felony.

for, saith he, ravishment is no felony by the common law, as burglarie is, although it be felony at this day by the statute : But it may seeme by M. Bracton, Glarvill, and Stamford, that by the ancient common law it was felony. The words of M. Bracton lib. 2. are thus, *Olim quidem corruptores virginis & castitatis suspendebantur, &c. modernis tamen temporibus aliter observatur, quia pro corruptione virginis amittuntur membra, &c.* And a little after, *Adelstanus; raptus mulierum ne fiat, defendit tam lex humana quam divina: Et sic fuit antiquitus observatum, quod si quis obviaverit solam, cum pace dimittat eam, &c. Si autem contra voluntatem suam, &c. jactat eam ad terram, foris facit gratiam suam &c. Quod si concubuerit cum ea de vita & membris suis incurrat damnum, &c.* And with this M. Glarvill also agreeth, fol. 112. & Co. L. Sect. 190. Note that the words, *de vita & membris suis incurrat damnum*, doe imply the offence to have been felony of death. Br. Cor. 204. Vide Co. L. 391.

West. 2. 34.  
P. Rape 1.

Also amongst the laws of S. Edmond, sometimes King of this Realme you shall find this law, *Qui cum Nunna vel sanctimoniali fornicetur, emendetur sicut homicidia; A multo fortiori*, then saith M. Stamford, shall hee be punished, if he had ravished her. So as Rape, at the first, saith Stamford, was grievously punished, untill the time of King Ed. the first, who seemed to mitigate the paine thereof by the Stat. of Westminster, 1 ca. 13. which gave two yeares imprisonment and fine : but spying the mischiefs ensuing upon the said Law, at his next Parliament holden at Westminster, called Westm. 2. cap. 34. he made the offence of Rape to be felony againe. Br. Coron. 204.

Crompt 33.  
Sec. Pl. 19.  
&

Note also by Britton, fo. 17. it is not Burglary in an infant under 14 yeares of age, nor in poore persons that upon hunger shall enter a house for victuall under the value of twelve pence, nor in naturall fooles, or other persons that be *Non compos mentis*; but for poore entring for victuall, at this day it is felony in them.

*Vnc. si pur conservation de vie, home emble viands de satisfie son present hunger, ceo nest felony, nec Larceny. Car Necessitas inducit privilegium quoad jura privata.* Stamf. Sr. Fr. Ba. 29.

And as for Infants, See *hic* cap 95. & 104.

### Theft. CAP. 100.

**T**Heft is the fraudulent taking away of another mans goods, with an intent to steale them, against (or without) the will of him whose goods they be : And this is of two sorts, Robbery, and Larceny.

Robberie.



## Robbery.

**R**obbery (in Latine called *Rapina*) is properly the felonious taking of any thing from the person of another, against his will, by assault in the high-way, and putting him in feare thereby: and here although the thing taken be, but to the value of a half peny, yet it is felony, for which the offender shall suffer death, without benefit of Clergy. Dyer 824.  
Stamf. 27. c.  
Finch.

As if one by the High-way assaulteth mee, and taketh away my purse, money, or other goods.

But if a thiefe assaulteth mee to rob mee, and biddeth mee deliver my purse, but taketh nothing from mee (in regard that I being too good for him, shall apprehend him, or shall levy huy and cry, whereby hee is taken) this is taken to be no robbery nor felony at this day: for although intent may make a man guilty of Treason (as you may see here before, Title *Treason*;) yet in case of felony there must be an execution of that which was formerly intended, and resolved to be done, viz. to kill the party, or to steal, or to take away the thing, &c. And therefore in Master *Plo. fol. 259. b. Walshe* (Serjeant) saith, *Que intent de faire tort, sans le act fait, nest punishable in nre Ley, Nec le Resolution, &c. mez le fefans del act est le sole point que nostre Ley respect.* 9 Ed. 4. 28.  
Stamf. 27.

And yet the assault (yea to lie in wait) only to rob mee, hath bin in former times holden to be felony, as appeareth by the books 27 *Aff. p. 38. & 13 H. 4. 7. 25 E. 3. 42. Fit. Cor. 132. & 267. Br. Coron. 106. 215.* Stamf. 27. c.

And so the intent to cominit burglary (or murder) hath bin holden to be felony; for the wil' was reputed for the deed. *Vi. 27. Aff. 38. Fit. Cor. 383. & Stamf. fol. 17. a.* but the Law is otherwise at this day.

In this former description of robbery, the word (taking) is largely to be extended against the offender; so that although the thiefe taketh nothing from my person, yet if he assaulteth mee, and upon his assault he threatneth to kill me, if I deliver him not my purse, and thereupon I cast my purse down, and he taketh it away, this is robbery. 20 Eliz.  
Cromp. 34.

So if one draweth his sword upon me, and biddeth me deliver my purse, and I refuse, and after he prayeth me to give him a peny, and I do so: yet it seemeth this is robbery; for by the assault I was put in fear, and out of that feare I gave him this money to be rid of him. Cromp. 34.

So if a thief do only assault me to rob me, and I deliver him my purse with mine own hand, yet this is robbery, in regard this fact of mine proceeded from feare, or by his menacing, &c. Cromp. 34.

*Stamf. 37. c.* So in flying from the Thiefe, I cast my purse into a bush, to save it, and the Thiefe seeth mee, and taketh it away, this is robbery; for in this case had they not put me in feare, I should not have cast my money from mee

*Crom. 35.* So if one assaults mee to rob mee, and I flying away from him, my Hat falleth off, and the Thiefe taketh it up, and carrieth it away; this is robbery.

*20 Eli. Cromp 34.* So if a Thiefe comes and biddeth mee deliver my purse (without drawing any weapon, or other force used) and I deliver him my purse, and hee finding but two shillings therein, delivereth it mee all again, yet this is robbery.

*44 E. 3. 14. 4 H 4. 3. Stamf. 27. f.* So if Thieves doe take a man, and by threats compell him to sweare to bring them money to such a place, (at another time) or else that they will kill him, by force whereof he bringeth them the money accordingly, this is Robbery. *Term. Pasch. 36 Eli.* it was adjudged accordingly.

*Cromp. 35.* One came to a Fisherman going in the high-way to Market with Fish to sell, and desired to buy some Fish of him, and he refused, whereupon the other took away some of the Fishermans Fishes against his will, and gave him more money for them than they were worth, but the Fisherman was thereby put in feare, whereupon the other was indicted, and arraigned at *York* about 26 *El.* but judgement was respited, for that the Court doubted whether it were felony or no.

Also in the former description of robbery, the words, from the person, are not so nicely to be construed, (that to make up robbery) the goods must needs be annexed to the body of the person; for in some cases it may be robbery, notwithstanding the thiefe doth neither take the goods from the person of the owner, nor yet assault him.

*Stamf. 27. Lamb. 365.* As if in my presence a felon taketh away my goods openly against my wil, this is robbery, though he neither taketh them from my person, nor assaulteth me; for the losse is the same, and the feare alike as though it had beene from my person.

*P. R. 131.* And if one or more doe take a horse out of my pasture, or drive my cattell out of my ground, I standing by, and looking on at the same time, this is robbery, if so be that the felon doth either make an assault upon me, or doe put me in feare.

Note to make it robbery, the person must be put in feare; for if a felon do take money from me in the high way, and shall not put mee in feare, this is no robbery. *Lamb. 266. Cromp. 35. P. R. 131.*

*Dyer 22. 4.* And you shall find a case in my Lord *Dyer*, how a felon did take money to

to the value of forty shillings or above, from the person of another in the high-way, and yet for that hee did not put his person in feare, by assault and violence, this was holden no robbery, and the offender was allowed his Clergy for the same felony, *anno 5 El. Finch libro 2.*

Note also, if two Thieves shall attempt to rob mee, and I flie from them, and one of the Thieves follow mee, and the other espying another true man (but out of the sight of his fellow) rides towards him, and robbed him, this was adjudged robbery in both the Thieves; and yet the one was neither in sight, or knowing of this robbery; but because they both came to rob, and at the same time, this fact committed by the one shall be imputed to the other also: it was one *Pudseys* case. 28 *El.*

If one shall cut my purse, or take or pick my purse out of my pocket secretly, or privily and fraudulently, it is felony of death without benefit of Clergie, if it be above (or to) the value of twelve pence. *Quare* if it be under twelve pence, because it is taken from the person of a man, and the forme of the Indictments are *insultum fecit*, 8 *Eliz. c. 4.* Also the words of the Statute (8 *Eliz.* are, That no person taking any money; or goods (generally) from the person of another, &c. shall have his Clergy: and yet by the opinions of M. *Lam.* and M. *Crom.* this is no felony of death, but petty Larceny, for which the offender is not to have judgment of death, and therefore needeth not his Clergy. Cut-purse. 8 *El. 4.*  
P. Cler. 1.  
Lamb. 266.  
Cro. 34 35.

So if one shall take any money or other goods from my person, secretly without my knowledge, or by sleight only, I neither being made affraid, nor witting of it (if it be above (or to) twelve pence in value) it is felony of death. P. Cler. 1.  
Lamb 166.

A man cutteth my girdle privily, my purse hanging thereat, and the purse and girdle falleth to the ground, but he did not take them up (for that he was espied, this is no felony; for that the Thiefe never had an actuall possession thereof, severed from my person: But if he had holden the purse in his hand, and then cut the girdle (although it had falne to the ground, and that he took it up no more) then had it been felony (if there had been above (or but) twelve pence in the purse) for he had it once in his possession: But these secret and privy takings from my person, are no robbery, for hee neither assaulted me, nor put me in any feare, *Dyer 224.* 6 *El.*  
Cromp. 353.

And in ancient time the offender only lost his right thumb. See *Fitz. Cor. 434.*



## Larceny. CAP. 101.

**L** Arceny (being fetched from the Latine word *Latrocinium*) is properly a fraudu'ent and felonious taking away of another mans personall goods in the absence of the owner, and without his knowledge.

Master Finch (*tit. Felonies*) saith, that Larceny is the secret taking of the goods of another, above the value of twelve pence, without pretence of title.

This is of two sorts, *Grand Larceny*, and *Pety Larceny*.

Grand  
Larceny.

Grand Larceny, is when the goods stolne be above the value of twelve pence, and this is felony of death, *sc.* wherein judgement of death shall be given upon the offender, except he be saved by his Book.

F. Cor. 451.

And yet if the goods stolne be to the value of ten shillings, if the Jury that passeth upon his arraignment shall finde that the goods did not exceed the value of twelve pence, then that offence shall be taken but for pety Larceny.

Pety Lar-  
ceny.

West. 1. c. 13.

Br. Cor. 84.

& 85.

Stamf. 14.

Pety Larceny, is when the goods stoln do not exceed the value of twelve pence, and for this the offender shall be imprisoned for some certaine time, and after shall be whipped, or otherwise punished by the discretion of the Justices before whom he is arraigned; but it is not felony of death. And yet by good opinions, the stealing of goods to the value onely of twelve pence, is felony of death. See *Fitz. Coron. 178.* & *Br. Coron. 84, 85.* & *Forf. 1 Doct. & Stud. 17.* And so Sir Robert Heath delivered it at Cambridge Assizes. 1631,

Yet may not the Justice of Peace, before whom such an offender shall be brought (out of the Sessions) punish by his discretion the said offender for pety Larceny, and so let him goe, but must commit him to prison, or baile him, to the intent he may come to his triall, as in case of other felonies; and if upon his triall the Jury shall finde the goods stolne, to exceed or to be but twelve pence in value, the offender shall have Judgement to die for the fault.

But if the Indictment be laid twenty pence, and the offender arraigned thereof, yet upon his triall if the Jury shall finde the goods to be but of the the value of ten pence, here the offender shall have judgement but as for pety Larceny. 41 E. 3. *Abr. d' Ass. 70.*

27 H. 8. 22.

F. Cor. 218.

Br. Cor. 254

22 & 219.

Also, although pety Larceny be not felony of death, nor punishable by death, yet it is a felonious act, and a felonious taking; for the Indictment of pety Larceny must be *Feloniae cepit*: and he shall forfeit all his goods and chattels for such a felony: and there is no difference either in the nature of the

the offence, or in the mind of the offender, but onely in the value of the thing stoln, which also maketh the difference of punishment.

And yet by some late opinions, petty Larceny is but in the nature of a trespassse; and then, where the Principall is convicted but of petty Larceny, there can be no Accessories; and the procurers, or receivers knowing of the goods to be stoln, are not to be dealt withall as for felony; But to be sent to the house of Correction, or to receive some other punishment by the discretion of the Justices at the Quarter Sessions. *Quare inde.*

If one shall steale goods to the value of foure pence at one time, and six pence at another time, and of three pence at another time, which together do exceed the value of twelve pence, and that these severall goods be all stoln from one and the same person, then may they be put together in one Indictment, and the offender being thereupon arraigned and found guilty, shall have judgement of death therefore. F. Cor. 413.  
Stamf. 24.  
Cromp. 36.6.

Again if two or moe together do steale goods above the value of twelve pence, this is felony of death in them all; for the felony in them is severall, though the stealing be jointly done. F. Cor. 404.  
Stamf. 24.6.

*Now first for the manner.* CAP. 102.

**I**N Larceny, two things must concur, *sc.* to take and to carry away, or to remove the thing taken with a purpose to steal the same; for the Indictment must be, *Cepit & asportavit*, or *cepit & abduxit*; and yet in these words, the letter is not so much to be insisted upon, as the meaning, and that for the better suppressing of offenders in this kind. The manner.

For although by the Law in Master Glarvils time *a furto omnimodo excusatur qui initium habuerit sue detentionis per dominum illius rei*; yet at this day it may be felony, though the offender take not the thing, but comes first unto it by delivery from the owners own hand, and so commeth lawfully to the possession: Delivery.

As,

If a Taverner doe set a piece of plate before his guest to drinke in, and the guest carrieth it away, this is felony; for the Taverner gave him no possession thereof, but onely the use to drink in it for the time. 13 E. 4. 9.  
Stamf. 25.

If I deliver goods to a Carrier (or other person) and bargain with him to carry them to a certain place appointed, if hee carrieth them to the place, and then conveyeth them away fraudulently, this is felony; for the privity of bailment was determined when they came at the place appointed. *Ibid.*

So, if the Carrier shall take out parcell of the goods, this is felony. *Ibid.*

Also if the Carrier shall carry them to another place, and there breaketh them up, and converteth part, or all, to his owne use, this is felony.  
*Ibidem.*

But if the Carrier shall sell, or give away, or otherwise imbecill the whole as he received them, this is holden to be no felony, because it was delivered him. *Stamf. 25. a Crom. 36. a.*

And yet in this last case there is besides the delivery, a bargaine and agreement to carry the goods, and the delivery was only to that intent, so that the property of those goods did alwayes remaine in the first owner.  
*Ideo quare.*

But if *A.* lendeth his horse to *B.* being a stranger, who rideth quite away with the horse, this is no felony in *B.* by reason of the delivery. And so did Sir *John Dodderidge* Knight, give direction at *Cambridge Assises* 1617, upon an Indictment of felony preferred in such a case; *quare* if the horse had been delivered to a servant, who rideth away therewith. *Vide postea sub hoc tit.*

7 *Lic. 5. 7.*

If a Clothier shall deliver any Woolle or Yarne to his Carder, Spinster, or Weaver, &c. to dresse, and they shall convey away, imbecill, or sell any part thereof, this seemeth to be no felony, by reason of the delivery, but they shall be punished by the discretion of two Justices of Peace, by whipping, or stocking, &c. *Vide antea tit. Cloth.*

13 *E. 4. 9.*

So if I deliver my goods to another to keepe, and he fraudulently consumeth them, or otherwise converteth them to his own profit, this is no felony because of the delivery.

Servants.

21 *H. 4. 14.*

13 *E. 4. 10.*

3 *H. 7. 12.*

21 *H. 7. 15.*

Apprentices & servants under eighteen shall be in case as they were before the making of this Stat.

21 *H. 8. 7.*

*P. Felon. 10*

*Cromp. 50.*

And so (it seemeth) if I deliver money or goods to *A.* to deliver to *B.* and *A.* flyeth away with them, consumeth them, or converteth them to his own use, this is no felony, by reason of the delivery.

If a man delivers money to his servant to keep, or plate to his Butler, or Vessell to his Cooke, or Horse to his Horse-keeper, or Sheep to his Shepheard, and such servant doth goe away with them, this is felony by the Common Law in that servant, (for these goods were alwayes in the Masters possession, and kept and used by the servant to the Masters behoofe.) But yet there was much difference of opinions herein; for the clearing whereof in some part, the Statute 21 *H. 8. cap. 7.* (which was made perpetuall by the Statute 5 *El. c. 10.*) provided, that all and singular servants of the age of eighteen yeers, other than an Apprentice, (which must be understood of such as be bound by Indenture, and by the name of an Apprentice) to whom any money, goods, or chattels, &c. by his or their Master or Mistresse shall be delivered to keep, of the value of forty shillings or above, if such servant shall goe away with, or shall imbecill, or shall

con-



convert to his own use, any such money, goods, or chattels of the said value, to the intent to steale the same, or to defraud his Master, or Mistresse thereof, it shall be felony: but this must be prosecuted within one year after the offence.

And now upon the construction of this Statute of 21 Hen.8. divers new questions and cases have since arose: As,

If a man deliver an obligation to his servant, to go and receive the money *Dyer 5.* thereupon due, and the servant receiveth the money, and then goeth away therewith, or doth convert it to his own use, this is holden to be no felony within the meaning of this Statute, for the Master did not deliver the money to his servant.

So if a man delivers to his servant wares or cattell to sell at a Faire or *Ibid.* Market, and he selleth them there, and receiveth the money, and then goeth away with the money, or converteth it to his own use, this is no felony with- *Dyer 5.* in this Statute, for he had not the money by his Masters delivery; neither went he away with the goods of his Master delivered him.

But if the servant received of his Master twenty pound in gold to keep, *28 El.* which he changed into silver, and then ran away with that, this is felony, *Crompt. 35.* for that gold and silver are both of the same nature, *sc.* money.

And if a man delivers to his servant a horse to ride to Market, or money *21 H 7. 15.* to carry to a Faire, or to buy cattell, or other things, or to pay to another man, and the servant goeth away therewith, this was no felony by the Common Law, by reason of the delivery thereof to him by his Master: but *quare* if it be not felony by this Statute, for that hee went away with the thing delivered him.

If the goods delivered to the servant to keep, be under the value of forty shillings, and the servant goeth away therewith, this is holden to be no felony at this day (*mez. tantum un breach del trust que le Mr. repose in son servant.*) But if the servant shall imbeasill, or goe away with any goods of his Masters, which were not delivered to him, this is felony, although they be under the value of forty shillings, &c.

If a man appoints his servant to take and carry Corn to Market, and to take his horse to carry the same upon, and the servant goeth away with the Corn, or horse, this is felony in the servant, if the goods, he so goeth away with, be all to the value of forty shillings.

But if the servant wastfully consumeth the goods and returneth againe to his Master, this is no felony. And these were the Directions of Sir Nicholas Hyde to a Jury of Life and Death, upon the arraignment of a Servant in such a Case, at Cambridge Lent Assises, Anno 2 Caroli Regis.

And

Dyer 5.

And if one of my servants doth deliver to another of my servants goods of mine (to the value of 40 s.) and he doth go away therewith, or converteth them to his own use, this is felony within this Statute, for this shall be said my delivery.

3 H 7. 16.  
Et property28  
Cromp. 50.

If a man delivers to his servant a piece of cloth to keep, and the servant maketh himself a garment thereof, and after goeth away therewith, this is felony (within this Statute) for that the property is not altered by the making a garment thereof, because the cloth may be knowne still. Otherwise is it of Barley turned into Mault, or of money melted and turned into a wedge or piece of mettall, or the like, for that in these cases the Barley, or money cannot be known again, but are altered in their nature and kind: but *quare*, and see the words of the Statute.

If a man delivers goods to one to keep, and after reteins the same person into his service, who after goeth away with those goods, this is no felony by the Statute of 21 H. 8. because hee was no servant at the time the goods were delivered to him. *Vide* Sir Fr. Ba. 39. 40.

If I deliver goods to the servant of A. to keep, and after I die, and make A. mine Executor, and before any new commandement of A. to his servant for the custody of the same goods, his servant goeth away with them, this is out of the Statute of 21 H. 8. *ibid*.

Cromp. 50.

If my receiver of my rents receive 10 li. of my Tenants, and run away therewith, it is no felony; for the Statute is where the Master delivereth to keep, &c.

13 E. 4. 9.

If a man delivers to his servant the key of his Chamber doore, and the servant taketh away his Masters goods in the chamber (above the value of twelve pence) this is felony at the Common Law, for the goods were not delivered.

A man laid and hid a purse of money in his Corne Mow within his Barne, and after his servant finding the same, tooke part of the money out of the purse, &c. and the servant was therefore indicted and arraigned of felony at Cambridge Sommer Assises, *Anno Dom. 1621*, before Sir John Dodderidge.

If an Apprentice, or servant under the age of eighteen yeeres, shall imbeasill their Masters goods, which were not delivered to them, nor committed to their charge, if the goods so imbeasilled be to the value of twelve pence or above, it is felony. But if the goods be under that value, it seemes such Apprentice, or servant, may be sent to the house of Correction. *Vide* his cap. 31.

P. Felon. 11.

P. Exec. 51.

Another felony there is by the Statute 33 H. 6. cap. 1. in the Servant that shall take away or spoil the goods of their deceased Master: but this felony grow-

groweth upon their default of appearance in the Kings Bench, after Proclamation; and therefore neither the triall nor hearing thereof belongeth to the Justices of Peace, because they cannot well take knowledge of such default in the Kings Bench.

The second thing which must concur (in Larceny) to make it felony, is the carrying away of the thing so taken; and yet it is not of necessity that it be clean carried out of the house, or place where it was, but it sufficeth that it be so far removed, that the evill and felonious intent of the taker may plainly appeare;

as  
If a guest will feloniously take the sheets, or other goods of the Inkeeper, out of the chamber where he lodgeth, and then (going to the stable for his horse) is taken with them, or they be found in some other room of the house where he had laid them; it is felony in both cases, although the possession of those goods continued in the Owner. *27 Aff. 39. Sec Stamp. 26 b. Br. Cor. 107.*

So is it if one taketh a horse in another mans Close, with an intent to steal him, and he be apprehended before he hath gotten the horse out of the same Close, this is Felony. *Lamb. 277. & Cromp. 36. a.*

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*Next of what things Larceny may be committed, and of what not. CAP. 103.*

**N**Ote, that the Felonious taking of any thing, whereof another hath property, is Felony. *22 H. 6. Br. Coron. 190.* Moveable goods.

And therefore Larceny may be committed by taking of any the moveable goods of any person, as money, plate, apparell, householdstuff, or corn, hay, trees, or fruit, (that are severed from the ground) or the like, the stealing of them is Felony.

It is also Felony to steale any Horses, Mares, Colts, Oxen, Kine, Sheep, Domesticall Lambs, Swine, Pigs, Hens, or Geese, Ducks, Turkeys, Peacocks, and other call, domesticall beasts or birds of tame nature. *18 H. 8. 2.* For the nature of these things, being tame (and not savage) if they shall run or flie away, though out of the sight of the owner, yet in what place soever they be found, they cease not to be his, so as whosoever deteineth them from the Owner, is punishable by way of action.

It is Felony also to take some things that be of wilde nature; as to take young Pigeons which cannot flie, out of another mans Dove-house or other house; so to take young Hawks, or young Herons, out of their nests (or ayries) and breeding in a Parke or other severall ground; so to take fishes that be kept in a trunke, or severall pond. For that the proprietie



of such things shall be always adjudged in the owner of the Dove-house, ground, trunk, or Pond, in as much as such things cannot (of themselves) goe or get out thereof, but that the owner of such Dove-house, ground, or pond, may take them at all times at his pleasure. 10 E.4.17.a. *Bingham.* & 18 E.4. fol.8.a.

Br. Cor. 91. So of old Doves taken in the Dove-coat (in the night time especially:)  
21 Aff. 95. and so it seemeth of any other wild beast or fowle (being of value) and ta-  
Kie 9.b. ken within a mans house.

29 b. At Cambridge Sommer Assises, Anno 1627. there were two indicted and  
22 H 8 9. b. arraigned of felony, before Sir Francis Harvey, for taking fish out of a Net  
16 E.4 7. lying in the River, being the severall fishing of Sir Ed. P.

Also it is felony to take any Swans that be lawfully marked though they be at large; for a man hath propertie in such: See Co. lib. 7. fol. 16. b. 17. a. *quare* if they be flying Swans, and not pinioned.

Also for Swans unmarked, if they be domesticall or tame, *sc.* kept in a moat, or in ponds neere to a dwelling house, and so be *Domui* or *Manni assueta*, to steal such is felony. See Co. 7. 17. b. *hic postea.*

So it seemeth of Swans unmarked, so long as they keep within a mans Mannor, or within his private Rivers, or if they happen to escape out of a mans Mannor, or private Rivers, yet if they shall be pursued and taken and brought in again, See Co. 7. 17. 16. b.

But if Swans that be unmarked, shall be abroad, and shall attain to their naturall libertie, then the propertie of them is lost, and so long felonie cannot be committed by taking of them.

And yet such unmarked and wild Swans, the Kings Officer may seise them (being abroad) for and to the use of the King, by his Prerogative, they being *Volatilia Regalia*: also the King may grant them; and by consequence another man may prescribe to have them within a certaine precinct or place; for it may be intended to have a lawfull beginning by the Kings Grant. Co. lib. 7. f. 16. a. b. & 18. a. b.

Also young Swans, or Cignets, they doe belong to both the Owners in common equally, *sc.* to the owner of the old Cock, and to the Owner of the old Hen, and the Cignets or young Swans shall be divided betweene them, Co. 7. 17. And to steal such Cignets is felonie, for they shall be of the same nature with the old Cock or Hen.

10 E.4. 15. Also it is felonie to take a tame Deer, which is marked and domesticall,  
Sigm. 35. c. especially if the taker knows it to be tame and domesticall; or that it weareth a Bell.

If a Hart, Bull, or other beast, which hath been wild by nature, and made tame and hath at his neck a little collar of leather, or any other notorious signe

signe, and he doth go abroad, and returneth again to the house (of his Master or owner) at his pleasure, if he be taken by a stranger & killed by night, or in other secret manner, this is felony by the Common Law. *Crompt. Author des courts.* 167.

But by the Common Law, Larceny cannot be committed by taking of savage or wild beasts, fowls, or fish, found in their wilderness and abroad, or at large; as Deer, Conies, Hawks, Doves, Pheasants, Partidges, Herons, Swans unmarked, or fish that are at liberty, &c. for no person can claime property in them. *Fitz. 87. a. Pl. 45.*

By the Statute, *De Foresta cap. 10. Nullus de catero amittat vitam vel membrum, pro venatione nostra* (so. *pur tuer Deare le Roy*) which branch is but an affirmance of the Common Law. *Crompt. Author des courts.* 166.

Howbeit by Statute it is now made felony to hunt Deer, or Conies (after some sort) in a Forrest, Park, or Warren; or to take a tame beast, or other thing in a Park, by manner of robbery. See the Statute made 3. Ed. 1. 20. & 1 H. 7. c. 7. *Vide postea, Felony by Statute, tit. Hunting.*

Also by Statute it is felony to steale, take away, or conceale a Hawke. *P. Felon. 10 Ibidem.*

But for the better understanding what the law is in things that be *fera Natura*, observe these differences. *Co. 7. 17. b. Pl. 45. A.*

In some things that be *fera Natura*, a man hath a right and property, and Property in some of them a right of Priviledge.

There be three manner of rights of property, *sc.*

1 Absolute. This property a man cannot have in any thing which *Ibid.* is *fera Natura*, but onely in such things as are *domita Natura*.

2 Qualified. These properties a man may have in things *fera Natura*; and to such properties a man may attain by two means, *sc.*

1 By industry: and this may be either by taking them onely, (and yet such things be his no longer than they be and remain in his possession or custodie;) or by making them tame (*sc. mansueta, id est, manui assueta, or domestica, id est, domui assueta*;) But in these last a man also hath but a qualified property, *sc.* so long as they remain in his possession, and so long felony may be committed by taking of them away; but if they attain to their naturall liberty, and have not *animum revertendi*, then the property of them is lost.

2 *Ratione impotentie, & loci*: As where a man hath yong Goshawks, or Herons, or the like, which are *fera Natura*, and doe breed (or aire) in his ground, he hath a possessory property in them: so as if one takes them when they cannot flie, the Owner of the soile may have an Action of Tres-

passé, *Quare boscum suum fregit, & tres pullos esperuorum suorum, or ardearum suarum, precii tantum nuper in eodem bosco nidificantem cepit & asportavit*: And to take these away is Felony as is aforesaid 18 E.4. fol. 8. *Stam. 25 c. Fi. 2. 86. l. & 89. k.*

Also note, that my Hawke which is flying at a Fowle, and my Deere that is chased out of my Park, so long as my servant or keeper maketh fresh suite after them, they still remaine in my possession, and the propertie is still in mee: But if they stray, it is lawfull for any man to take them. *Fi. 45.*

*Co. 8. 38 b.*  
*Sec D Et &*  
*St. ud. 110.*

But when a man hath beasts or Fowls (that be savage, and in their wildnesse) *Ratione privilegii sc.* by reason of a Park or Warren, &c. (as Deer, Hares, Conies, Pheasants, or Partridges, or the like, which be things of Warren) he hath no property in them: And therefore in an action, *Quare Parcum, or Warrenam &c. fregit & intravit, & 3 damas, lepores, cuniculos, Phasianos, Perdices, &c. ibidem invenit, cepit, & asportavit*, he shall not say *suos*, for that he hath no property in them, but they belong unto him: *Ratione privilegii* (for his game and pleasure) so long as they remain in the place priviledged. And if the Owner of the Parke die, his heire shall have them, and not his executor or administrators; for that without them the Park (which is an inheritance) is not complete; neither can Felony be committed by taking of them, *Fi. 86. m.*

*Lamb. 270.*

Neither can Larceny be committed by taking of Dogs of any kinde, Apes, Parrats, Squirrils, singing Birds, or such like thing (kept onely for pleasure, and not for any profit) though they be in the house, and made tame.

*Co. 7. 18.*  
*12 H. 8 3.*  
*Br. Tres. p.*  
*407.*

No not by taking a Bloud-hound or Mastiffe, although there is good use of them, and that a man may be said to have a property in them, so as an action of Trespasse lieth for taking them; yet in regard they are things of so base a nature, no Felony can be committed by taking them.

But yet to take a dog of any kinde, or other thing of pleasure, from the person of another, or out of the possession of another, and in his presence, if it be done with force or violence, it amounteth to a breach of the Peace. And if it be done with Force, and by the number of three persons, or mo, it will amount to a Riot, as it seemeth.

*Stam. 25. a.*

Also it is Felony to steal the flesh of any tame or wild fowle, or of any Deere, for other beast, that is dead, out of the possession of another man.

So is it to pull the wooll from the sheeps back, or to kill them, and to take the skin, and leave the body behind.

*Cromp. 36.*

But note, that in all these cases of Felony aforesaid, the thing so taken or stolne must exceed the value of twelve pence, also it must be of a thing personall and not reall.

For.



For the taking of any reall chattell, or thing, is no Felony : as,

If one cuts down my tree, or my corne and carrieth it away, or pulleth and stealeth my Apples hanging on the tree, and carrieth them away, these are no Felony, for these things be part of my Free-hold till they be severed.

Things  
reall  
Stamf. 25.  
10 E. 4. 17.  
1.  
Co. 4. 19.

But if I gather mine apples, or cut down a tree, or corn of mine own, then it is Felony if another shall carry them away Feloniouly.

And by the opinion of *Mar.* if a stranger cuts downe my tree, or corne without title, and another time after he fetcheth it away, that will prove Felony, because it was a chattell severed when he took it. See 12 *Aff.* p. 32. *Br.* *Lamb.* 272. *Coron.* 76. *Cromp.* 36.

Also to take lead from off a House or Church, will not amount to Felony, for it is parcell of the house or Free-hold.

Also to take away the Evidences of a mans Land, or an Indenture of Lease, or any Obligation, Deed, Specialty, or other writings, (be they in or without a box) it is no Felony, because they cannot be valued; and again, because they concern inheritance, chattels reals, or things in action: yet if they be in a box unsealed, it seemeth that the taking of the box Feloniouly, is Larceny; but if the box be sealed, and have writings within it, the box shall be of the same nature as the writings that be therein. 10 E. 4. fol. 16.

Stamf. 23.  
Stamf. 25.  
Pr. Cor. 137.  
265.  
Br. Cor. 176.

So to take away an Infant in Ward, is no Felony.

Also the taking and carrying away of such things whereof the Owner is unknown, in some cases is no Felony: as the taking away of treasure that was hidden or lost, (be it money, bullion, or plate) or of wreck of the Sea, or goods that be waved, or straves (before they be lawfully, seized, &c.) it is no felony; but the takers away of such treasure, wreck, and waife, shall be punished by fine and imprisonment. 22 *Aff.* p. 99. *Br. Coron.* 96. *Fit. Coron.* 187. & 265.

And yet where the goods be *bona cujusdam hominis ignoti*, or *bona cujusdam mortui & ignoti*, or *bona parochianorum*, or the goods of a Church, or Chappell (as Bels, Books, Chalices, Surplices, Bell ropes, &c.) or the goods of any Corporation in time of Vacation, in these cases there be Owners of them to some purpose, and therefore it is Felony to steal such goods. *Vide Cro.* 25.

Dyer 29.  
Lamb. 172.  
476. 478.  
7 Ed. 4. 14.  
15.  
Br. Indist.  
ment. 33.

One *Nottingham* digged a dead body out of his grave, and took away his winding sheet, this was holden to be no felony, but punishable as a misdemeanour, and the offender was adjudged to be whipped, &c. for it: this was at *Cambridge Sommer Assizes, Anno 1617.*

Note also, that man may commit Felony, by taking his owne goods;

7 H.6.43.  
5 H.7.18.  
Stamf.26.

If *A.* do lend or deliver goods to *B.* to keep, and after *A.* doth take them away feloniously, or privily, and fraudulently (to the intent to charge *B.* or to recover damages for the same against *B.* by an action of *Detinue*) this is felonie in *A.* and yet the propertie of the goods were in him: yet *M. Brook. Coron. 142.* maketh a *quare* thereof.

Marlett 12.  
Cromp. 37.

But if I lend my plate, or deliver my goods to another to keepe, and hee melteth my plate, or changeth the fashion of my goods; now if I should take that mettall, or those goods feloniously, it were felony in me, because the propertie is altered by altering of the fashion. See a little before.

If the party robbed taketh his goods again from the Thiefe, and suffereth him to escape, *Vide postea tit. Accessories.*

Cromp. 37.  
P.R. 129.

A man findeth my purse in the high way, and being asked thereof, denieth it, this seemeth to be no felonie, for he came not thereby at the first feloniously: But by the Leviticall Law hee was to restore the thing found, with an addition of the fift part more thereto. *Levit. 6. 3. 5. Numbers, 5. 7.*

A man hath two chains, the one of gold, the other of copper, and he selleth the gold chain, and delivereth it, and presently after hee secretly conveys away his gold chain, and puts the copper chain in the place thereof, this is felonie. *Lettur. Mr. Cock.*

So if one taketh away my horse, and leaveth another of his (which is like unto mine) in stead thereof, this is felonie, *ibidem.*

Cromp. 37.  
P. Iust. 54.

A man commeth to my wife, or to my servant with a false message, token, or letter made in my name, and thereby getteth my goods, yet this is no felonie, but it shall be punished by the Statute of 33 H.8.c.1. See *antea tit. Counterfeiters.*

*What persons are chargeable in Larceny. CAP. 104.*

27 Aff. 40.  
Stamf. 26.  
142.  
Fi. 12.

**A** Feme covert doth steal goods by the compulsion or constraint of her husband, this is no felonie in her *F. Coron. 160. & Fitz. Coron. 199. Br. Coron. 108.* For where the words of the Law are broken by compulsion, there the Law is not offended, neither shall any person be damnified for doing a thing whereto he is enforced or compelled, but such compulsion shall be a good excuse in our Law. *Pl. 19. a. b.*

Marlett 12.  
27 Aff. 40.  
See Stamf.  
142. c.  
Ch. 26, 17.

But yet if by the compulsion of her husband, shee committeth murder, this is felony in them both.

If a feme covert doth steale goods by the commandement or procurement of her husband (without any constraint) this hath been holden to be

be felony in her, *sc.* that the wife in such case is a principall, and the husband but an accessarie: M. *Bracton* also saith it is felonie; for *Licet uxor obedire debeat viro, in atrocioribus tamen non est ei obediendum*; but Master *Stamf.* and others seem to be of another opinion, *Stamf. 26. P. R. 130. Br. Coron. 108.*

If the husband and the wife joyn in committing of Treason, the necessity of obedience doth not excuse the wives offence, as it doth in felony, because it is against the Common-wealth; for *Privilegium non valet contra Rempublicam. Ba. 32.*

But if the husband and the wife jointly together do steal goods, this shall be taken to be the onely act of the husband, and such felony shall be imputed onely to the husband, and not to be felony in the wife, by some opinions. *Vide Stamf. 26. & Lamb. Fitz. Coron. 160. & Ba. 31. & 37.* that the wife can neither be Principall, nor Accessarie, in regard of the subjection and obedience she oweth to her husband.

And yet M. *Bracton* seems to be of another opinion herein, saying. *Quid erit si uxor cum viro convicta fuerit, vel confessa fuerit quod viro suo consilium praestiterit & auxilium, nunquid tenebuntur ambo? imo ut videtur:* (and a little after he saith) *alter eorum potest esse malus per se, & alter bonus, ita uterque eorum possit simul & conjunctim esse malus.*

And again, *Sic ut sum participes in crimine, ita debent esse participes in poena. Ibidem.*

And Master *Bracton* seemeth to make this difference, that although the wife may conceale her husband's offence in case of felonie (as also shee may relieve and keep company with him, knowing him to be a felon) *Consentire tamen non debet feloniam viri sui, neque esse coadjutrix, sed feloniam, & nequitiam viri impedire quantum possit.* And accordingly at Cambridge, at Lent Assises, Anno 1619. the wife was in such case indicted and arraigned with the husband for robbing of a Windmill.

Again, at Cambridge Lent Assises 1620; one *William Houghton*, and *Katherine* his wife were together indicted and arraigned for stealing certaine apparell; and the husband and wife were indicted for the like, at Lent Assises, Anno Dom. 1624.

Also the wife is chargeable for a trespassse done by her and her husband together; and therefore (howsoever) it shall be safe for the Justice of Peace in such cases to commit the wife to the Gaol, as well as the husband.

And yet for this case of a trespassse committed by the husband and wife, Sir *Fr. Bacon* giveth this Rule. *Excusat aut extenuat delictum in Capitalibus, quod non operatur idem in civilibus. sc.* In capitall causes, in favorem vite, the Law will not punish in so high a degree, except the malice of the will, and intention appear. pag. 36. 37.

But c



Stamf. 26.

But a woman covert, alone by her self (the husband not knowing thereof) may commit Larceny, and may be either principall, or accessary; as if she steal another mans goods; or receive the Thiefe that stealeth them; or shall receive stolne goods into her house, knowing them so to be; or shall lock them up in her chest or chamber, her husband not knowing thereof: and in such case if her husband so soon as he knoweth thereof, do forthwith forsake his house and her company, and make his abode elsewhere, he shall not be charged for her offence; whereas otherwise the Law will impute the fault to him, and not to her. *P.R.* 130.

*F. Cor.* 381.  
See *Stamf.*  
26.

Goods are delivered to the husband to keep, and his wife stealeth them, it is no felony; otherwise is it if the husband had delivered them to a stranger, and then the wife had taken them feloniously out of the possession of the stranger, this had bin felony in the wife, *Mar. Lett.* 12.

*F. Cor.* 455.  
*Br. Cor.* 143.  
*Stamf.* 27.

Also the wife shall not be accounted a felon, for taking or stealing the goods of her husband: and if the wife doe take her husbands goods, secretly, and delivers them to a stranger knowing thereof, yet this is no felonie in the stranger. See *Abr. d' Ass. fel.* 71.

*Br. Cor.* 77.  
*Crompt.* 35.  
*P.R.* 130.

But if a man do take away another mans wife, with her husbands goods against the wifes will, this is felony by the Stat. *Westm. 2. cap.* 34. as it seemeth; and so if any man takes away anothers mans wife, with her husbands goods, against the husbands will, this also is felony.

If a married woman shall deliver to her adulterers, her husbands goods, this is felony in the Adulterer. *Lettur. Mr. Cock.*

And if the husband commits Larceny, and the wife knowing thereof, do receive or relieve him, &c. she is not thereby Accessary to the felony. *Vide postea tit. Accessory.*

Note that a woman convicted of or for the felonious taking of any mony, goods, or chattels, above the value of twelve pence, and under ten shillings, or as accessary to any such offence, (the said offence being no burglary, nor robbery in or neer the highway, nor the felonious taking of any goods from the person of another privily) shall for the first offence be branded in the hand, and further punished by imprisonment, or whipping, at the discretion of the Judge or Justice, before whom she shall be so convicted, *21 Jac. cap.* 6.

Servant.

If a servant by the compulsion of his Master stealeth another mans goods, this is felony in them both, notwithstanding such compulsion. See more of servants here before *sub hoc tit.*

Ideot.  
Infant.  
*Lamb.* 178.

An ideot, lunatick, dumbe and deaf person, and an infant, are chargeable in Larceny, after the same sort, as they are chargeable in homicide; which see here before in Manslaughter, *cap.* 95. And yet if an Infant shall

com-

commit larceny, and shall be found guilty thereof before the Justices of P. it shall not be amisse for them to respice the judgement; and so hath it often been done by the Judges. See *Stamf.* 27. & 3. *H. 7. fo. 1. b. & 12. b. 35. H. 6. 11. Br. Coveri. 80.*

At Cambridge Assises in Lent, 1619. before Sir Henry Montague, and Sir John Doddridge, Judges of Assise there, they sitting together upon the prisoners, an Infant about 14 yeares of age, was arraigned before them of Larceny, and was found guilty, and upon demand of his Clergie had the same allowed him, and was burned in the hand.

The like was done there at Lent Assises, 1624. before Sir Randall Crew, Lord chiefe Justice. See *Doct. & Stud. fol. 148.*

A Bailife, &c. distraineth secretly for rent, and after selleth the Distresse, and when the owner demandeth his goods, which were so distrained, the Bailife denieth them, this is felony. *Let. M. Cock.*

If an Escheator, or other officer commeth to a man, and telleth him that he is outlawed, when he knoweth that he is not outlawed, and by colour thereof he taketh his goods, this is felony. But if the party be indeed outlawed, and the officer commeth to take his goods, and the other party sheweth him a *Superfedeas*, and notwithstanding the officer taketh away his goods, this is no felony. *Ibid.*

If an Officer shall levie any duty, for the King, without warrant, this is felony. *Lectur. Mr. Cock. Vide My Office of Sheriffe. cap. 126.*

So where any officer shall levie any duty, without sufficient warrant or authority, and shall after convert the same to his owne proper use, it seemes to be felony.

Other Felonies by the Common Law. CAP. 105.

**B**urning of a barne ( which is adjoyning to a dwelling house ) in the night feloniously, is felony by the common law. Burning houses.

So is it to burne a barne (in the day time) having corn in it, and though it adjoyne not to the dwelling house, *Co. 4. 20.* 11. H. 7. 1. Co. 4. 20. Lamb. 262.

Burning of any dwelling house, or other house parcell thereof, willingly and feloniously done, is felony by the Common law, whether it be done by night, or by day. *Br. Coron. 135. 155. 226.* 3. H. 7. 10. 4. Co. 11. 29. Stamf. 36.

Burning of any other house, or of a flacke of corne feloniously, seemeth also to bee felony by the Common Law: for the words of the statute of *Westm. 1. cap. 15.* ( which statute seemeth to bee but a rehearsal of the Common Law. *Br. Mainpr. 78.* ) ordaineth that such as bee taken for burning ( generally ) feloniously done, be not bailed: and of that opinion seemeth

seemeth Maſt. Britton, who wrote preſently after the making of the ſame ſtatute. Britton. fol. 16. See Stat. Wincheſt. 13. E. 1. ca. 1. & 28. E. 1. cap. 17. And it appeareth alſo by Britton lib. 1. cap. 17. that ſuch offenders were by the Common law to have been burned. Fitz. 269. b.

The booke called the *Mirror of Juſtices*, among other capitall offences, hath this *le Crime de Arſon*: and he deſcribeth the offenders. in this ſort, *Ardours ſont qui ardent Cisie, ville, meason, home, beaſt, ou auters Chatelets delous felony in temps de peace, par paine ou vengeance.*

If a man will burne his owne houſe willingly, this is no felony. But if by ſuch burning he burneth his neighbours houſe, this ſeemeth to be felony,

A man intending to burne another mans houſe, caſteth fire thereupon. and after that it is kindled and burnt in part, it is quenched, yet this is felony, although the whole houſe were not burnt downe.

So it ſeemeth if a man ſhooteth unlawfully in a hand gun, and the fire thereof ſets another mans houſe on fire, and burneth it downe, this is felony, *quare.*

If an Indiſtor (or Juror) in caſe of treaſon, or felony, ſhall diſcover the Kings Counſells and his fellowes, it hath beene adjudged felony. *Vide antea de Petit Treason.*

Reſcous.

1 H. 7. 6.

Br Co. 127.

130.

Stamf. 31. b.

Escape.

9. H. 4. 10.

Reſcuing, or taking away from an officer, any offender, who is attained, imprisoned, or but arreſted for felony, ſuch *Reſcous* is felony, as well in him that made the *Reſcous*, as in him that is reſcued. See more here

*pag. ſequent.*

Alſo when a man hath arreſted another for felony, and after letteth him goe at libertie, this is a wilfull eſcape, and ſhall be adjudged felony in him that did ſo let him eſcape. And in caſe of treaſon, ſuch eſcape is treaſon.

See paulo poſtea.

Breaking

of priſon.

Stamf. 30. 38.

See the

ſtat. 1. E. 2.

cap. 106.

2. E. 2.

cap. 106.

Breaking of priſon (before the ſtatute *De frangentibus priſonam*, made 1. E. 2.) was felony by the common law, for what cauſe ſoever hee were in priſon, yea though he had been imprisoned but for a treſpaſſe. But now that ſtat. hath changed the common law therein: ſo that now if a man be imprisoned, or arreſted, or taken for a treſpaſſe, and doe make an eſcape, or be reſcued by a ſtranger, this is but finable at this day. *Vide Fi. libro 2. cap. 106.*

If an offender which is adjudged, or otherwiſe by law is to abjure the Realme, ſhall depart, and after ſuch departure ſhall returne againe without the Kings licence, then in the cauſe for which hee did abjure were felony, the offender ſo returning ſhall have judgement of life and of member, by the common law: but if the cauſe was not for felony, then the offender by the Common law ſhall bee taken, and onely make a fine to the King.

But



But now see the Statute of 35. *El. ca. 1. & 2.* where it is made felony also for popish Recusants, or other Sectaries which are to abjure if after Abjuration they shall returne without the Kings speciall Licence. See *hic postea.*

## Felonies by Statute. CAP. 106.

**I**F any man being the Kings sworne Servant &c. shall confederate, imagine, compasse, or conspire with another, to destroy the King, or any Lord of this Realme, or any other sworne to the Kings Councell, or the Steward, Treasurer, or Controller of the Kings house, it is felony: but what the Just. of P. may doe herein, See *antea tit. Felony.* 3 H 7. c. 14.  
P. Felon. 13.

Breaking of prison by one being therein for felony, or by one being a prisoner for felony, is felony. Breaking  
Prison. 11. 1  
1. E. 2.  
P. Felon 15.

And yet M. Finch saith, that if the prison be broken by the party himselfe, it is felony, whatsoever the cause of his imprisonment were, yea, although it were but for a trespassse. *Vide libro 2. quare & vide Fitz. Coron. 248. Escape non adjudicabitur vers ipsum qui commissit pro transgress.*

Now every one who is under arrest for felony, is a prisoner, and that as well without the prison, as within; or in the stocks in the high street; or in the possession of any that hath arrested him, or that hath the keeping of him being arrested for felony, *Vi. Libro 2.* Dyer 99.

And therefore if any person who is under arrest for felony, or suspicion thereof (whether he be in the gaole, or out, or but in the stocks, or but in the possession of any that hath arrested him) if he shall make an escape, this is a breaking of prison in such prisoner, and is felony. 1 E. 3. 17.  
P. R. 147.

And yet one committed to the Constable (by the Just.) for suspicion of felonie, making an escape from the Constable, was afterwards taken againe and indicted and arraigned for that felony; and by the Jury of Life and Death was found not guilty of that felony; and after was indicted for the escape: but here considering the prisoner was found not guilty of the first felony, therefore his escape from the Constable, was holden not to be felony; and so I have knowne the Jurie directed by the Judge of Assize.

Before the statute of 1. *Ed. 2.* if it had not been the Kings prison which had been broken, it had been no felony, as it appeareth by *Britt. fo. 17.* And with him also agreeth the Booke called the *Mirour of Justices, lib. 2.* who saith thus, *Gaole nest autre chose que common Prison; & nul, ouy a riels fr'q; le Roy: Private prison est dauten dont a chescun list desceper, que poert, si non que il face autre trespasse que escape.*

But note. that at this day there is no difference whose prison the offender doth breake, whether it be the Kings prison, the Lords of a Franchise, or

any other persons, for the letter of the statute, is *Prisonam frangentibus*, and not *Prisonam nostram*, so that whose prison soever it be which is broken, it is within the compasse of this stat. *Stamf. 31.*

Also whether it be a common Gaole, or a privat Gaol, or Prison, yea, or but the Constables house, or the house of any other person who hath the custodie of him for felony, there is no difference; for these are prisons for the time, and so within both the words and meaning of this stat.

Also by this statute the breaking of prison is felony in the prisoner himselfe. And yet if the prison shall be on fire by Casualty, and they within shall break the prison for saving of themselves, this is no felony, but excusable by the law of Nature. *Plo. fol. 13. b. 1. H. 7. 19. Reade 15. H. 7. 2.*

Rescous.

1. H. 7. 6

1 Ed 3. 17.

Dyer 99.

And if a stranger doth breake the prison, or open the stocks, or make a *Rescous*, whereby one imprisoned, or arrested for felony, escapeth, this is felony both in the prisoner, and in the stranger, although the prisoner was never indicted of the felony.

9 H. 4. 1.

F. Co. 133.

Stamf. 33. 2.

By some opinions, if a stranger shall disturbe the arresting of a Felon, it is no felony, except the Felon were taken and arrested, and after rescued: yet *Fitz. Inst. P. fol. 114.* saith, that such disturbance before arrest, is felony.

1 H. 7. 6.

If a prisoner bee rescued at the Gallowes, or as hee is going to execution, this is a breaking of prison, and felony within this statute. And yet note this difference, *sc.* that if a felon in going to his execution, &c. bee rescued from the Sherife, this is felony, if it be presented before the Justices &c. and so found by Enquest. But otherwise it is, if it commeth in by the returne of the Sherife, there is no felony. *1. Hen. 7. fol. 6. Fitz. Indictment 30.*

Escape.

P. R. 147.

149

44. Ass. 18.

Br. Es. 31.

Stamf. 31.

If a Gaoler, a Constable, or any other, which hath a prisoner under arrest for felony, or suspicion thereof, voluntarily letteth, or suffereth him to goe at libertie; (though this be no breaking of prison, yet) this is felony in the Gaoler, Constable, or him that letteth such prisoner escape, but it is no felony in the prisoner: but if such a prisoner shall escape by the negligence of his Keeper, then the felony resteth in the prisoner onely, and not in the Gaoler, &c.

If the Gaoler or Keeper shall marrie a Felon which is in his Gaole, this is an escape; but *quare* whether it be felony in the Gaoler or no.

If a Gaoler shall let a felon to mainprise, which is not mainpernable or bailable, *dicunt*, that this is no felony, but finable: for although it were voluntarie, yet it was *pex ignorance del Ley*. But *quare* hereof, for that the Gaoler hath no authoritie to let any prisoner to baile; And the prisoner being in for felony, the Sherife himselfe at this day hath no authority

authority to baile such a prisoner, except it bee by vertue of the Kings Writ. &c.

If the Constable (or other officer) shall voluntarily suffer a thiefe, being in his custodie, to goe into the water to drowne himselfe, this escape is felony in the Constable, and the drowning is felony in the thiefe, *quia felo de se*. Otherwise if the thiefe shall suddenly (without the assent of the Constable) kill, hang, or drowne himselfe, this is but a negligent escape in the Constable.

The voluntarie letting of a Felon to escape, which is not arrested for P. R. 149. felonie, though hee knoweth of the felonie, yet it is no felonie; neither 150. can it be an escape without an arrest: and yet such an offender (being an officer) may for such his negligence or default, bee indicted, and fined, as 9. H. 4. 1. it seemeth by the words of the Commission: *Quere* if he be not accessory Stamp 32. to the felony. See *Br. Escape*. 42.

Note that a man is alwayes said to be in prison, so long as hee is within the sight of the Gaoler, or of him that hath him in custody, though hee doe breake away or escape. Dyer 440.

For an escape is properly, when a prisoner shall escape and get out of the view of his gaoler or keeper. & shall not be taken again by fresh suit Stamp 33. *Br. Esc.* 4.

And if a prisoner shall make an escape (of his own wrong and without the consent of the Gaoler, or other person that hath him in custody) though he escape out of their sight, and into another County, yet if he be taken again upon fresh suit before the Gaoler. &c. (be sued, or) hath fined for the escape (though it be seven yeares after) yet this is no escape, as it seemeth, for which the officer shall be charged; for there is no prejudice to the King by the escape, though it be felony in the prisoner, as aforesaid, and a breaking of prison in him. Co. 3. 44. & 52. accordeth in case of a prisoner taken in execution, that shall make an escape of his own wrong. & 35.

if a Gaoler, or other officer, &c. shall licence his prisoner to goe abroad for a time, and to come againe; this is an escape, because the prisoner is found out of the bounds of his prison, though the prisoner returne againe according as hee shall bee prescribed: and so is it, if the officer shall suffer his prisoner to goe abroad for a time, by baile or baston, this is an escape; yet they are holden in both cases to bee but negligent escapes in the officer, and so but finable. But *quere*, for the Gaoler and other officers ought to keepe their prisoners in *Salva arcta & custodia*. Vide post. tit. *Imprisonment*. Co 3. 44. Stamp 33. 0.

Note, that the Sheriffe of every County shall have the keeping of and shall bee chargeable and charged with the common goale and prison of the said County, and with all the prisoners therein; and must put



6 H 7 11.  
Co 4 33.  
West M. 1.  
Co 9 98.  
Lamb. 11. 5.

Temp. Eliz.

in such gaolers or keepers for whom they will answer, as appeareth by the Statutes 14. Ed. c. 10. & 19. H. 7. c. 10. which also seemeth to have been the common law before, (as you may see by the Preamble of the statute of 14. Ed. 3. & Co. 4. 34.) and therefore the high Sheriffe himselfe shall bee answerable for an escape of a felon, suffered by the Gaoler, and may be indicted for the same (see the *Presidents* in *Lambert, West, and Crompton* : ) And so the high Sheriffe as hee hath an Office of great antiquitie, and of great trust and authoritie ( for the time ) so withall it is a place of great perill and charge ; and if the rigour of Law should bee layed upon them, then should they have a warme Office, and be well rewarded. But in such cases I have observed the favourable exposition and dealing of the learned and reverend Judges: First, you shall find in Sir *Ed. Cokes Reports* : lib. 9. f. 98. that the Gaolers who have the actuall possession shall be answerable for escapes, if they have wherewith : also *Popham* chiefe Justice, did cause one *Stavar* (a Gaoler at *Cambridge*) to be indicted, arraigned and hanged for an escape of a felon, suffered by him.

In the *Doff. & Stind. cap. 42.* this difference is taken, *sc.* that if the escape were by default (*sc.* a negligent escape) of the gaoler, that the King may charge the gaoler if he will, or the Sheriffe may be charged by reason of the stat. of 14. E. 3. cap. 9.

But if it be a wilfull escape in the gaoler ( which is felony in him ) the Sheriffe shall not be bound to answer to the felony, ( see there, fol. 135. & 137. ) But there the Sheriffe may bee fined to the value of his goods. *Stamf. 35. b.*

Escape of  
two sorts.  
*Stamf. 32.*

*Stamf. 33.*

Now an escape is of two sorts : voluntary, and negligent.

Voluntary escape, is where one doth arrest, or hath imprisoned another for felony ( or other offence ) and after voluntarily letteth him goe at libertie where he will.

Negligent escape, is when the partie arrested or imprisoned, doth escape against the will of him that arrested or imprisoned him, and is not freshly pursued and taken againe before he hath lost the sight of him which escaped ; the penaltie thereof seemeth to be onely a fine at the discretion of the Judges or Justices : Yet see *Stamf. 35. k.* a difference of the fine, where the prisoner is attainted, *le fine serra C. li.* where but indicted C. s. and where only taken upon suspicion. *semble dispunishable quare. & vide f. Coron. 224. 316. 454. & hic infra*, that in Case of a trespasse a negligent escape is finable.

*Stamf. 32. i.*

But for voluntary escape, if the arrest or imprisonment were for felony, it shall be adjudged felony in him which did voluntarily suffer the prisoner to escape ; and if the arrest, &c. were for Treason, it shall bee adjudged Treason ;

Treason; and if the arrest or imprisonment were for a trespassse, it shall be adjudged a trespassse: And in case of felony, there is no difference, whether the felon be arrested by an officer, or by another. See *Br. Cor. 112*.

Also in case of a trespassse, or other offence of what kind soever, (being neither treason nor felony) there seemeth no difference, whether the escape suffered by the officer, &c. be voluntary, or negligent; but that the officer in both cases shall be fined for such an escape, according to the quantitie of his default, by the discretion of those that shall be Judges of it.

One *Nichols* assaulted *Cholmely* to rob him, and killed him; after *Queen Eliz.* granted *Nichols* his pardon; But *Cholmely* his wife having commenced her appeale against *Nichols*, he was still detained in prison at the womans suit; after the Gaoler suffered *Nichols* voluntarily to goe at large, and so to escape; by the opinion of *M. Plowden* this was felony in the Gaoler, although *N.* the prisoner were now no felon as to the Queene, in regard he had obtained his pardon, *Plow. 476. b.*

A prisoner found guilty of pety Larceny, is adjudged to be imprisoned by the space of a moneth (for his punishment) and after the moneth hee breaketh prison, and escapeth. *quare* what this is in the prisoner, and what in the Gaoler: It is holden that the Gaoler shall bee charged with this escape; but if a prisoner be discharged (by judgement) paying his fees, if he escape, here the Gaoler is not chargeable; the difference is, the prisoner in the first case was by judgement committed to prison; and in the last case he is adjudged to be acquit of his imprisonment, paying, &c. and yet hee is a prisoner untill hee hath payd his fees. 21. *H. 7. 17. a. Br. Escape 16. Plow. 465.*

Note that a voluntary escape is no felony, if the Act done were not felony at the time of the escape made; as if *A.* doe strike *B.* and hurt him mortally, whereupon the Constables doe arrest *A.* and after willingly suffer him to escape, and after *B.* dieth of that stroke, this escape is no felony, either in the Constable, or in the prisoner; yet the Constables shall make a great fine, yea shall (or may at the discretion of the Judges) bee fined to the value of thir goods (as it seemeth) by 11. *H. 4. 12. and Stat. 35. b.* because this escape was voluntary.

If a man be wounded, and the percussor is voluntarily let goe at large by the Gaoler, and after death ensueth of the hurt, yet this is no felonious escape in the Gaoler. 11. *H. 4. 12. Ba. 38.*

The voluntary suffering him to escape, who hath killed another *se defendo*, or by misadventure: or of him that hath committed pety Larceny, seemeth not to be felony, for that these offences are no felony, of death; but he that suffereth such an escape, shall bee fined onely, *Crompt. 39.* Yet

*quare*, for they that suffered this escape are not to judge whether these offences be felony or no. See hereof *postea sit. Evidence against Felons.*

A man was taken for suspicion of Felony, and was delivered to the Constable of C. and after escaped for want of good keeping, and the Constable was therefore taken and arraigned; And pleaded, that for as much as the felon was not taken with the manner, nor at the suit of the party, nor indicted of felony, therefore it was no escape, &c. And so was the opinion of the Court then. See 42. *Aff. p. 5. Br. Escape 29.*

But the contrary was after holden in case where the escape was voluntary, although the prisoner were taken onely upon suspicion. 44. *Aff. p. 12. Br. Escape 31. & Dyer 99.* that it is felony, although the prisoner were not indicted of felony.

4 Ed. 4.  
P. Esc. c. 2.  
Stamf. 35. c.

Note also, where one is a prisoner by arrest onely, and hee doth scape, there the escape shall be presented before the Justices of peace, or other Justices having authority to inquire of the escape, before he that suffered the escape shall answer it, *sc.* before any thing shall be taken, or levied, by the Sheriffe, or other officer, *Vide Co. 11. 64. 65. & Stat. Westm. 1. c. 4.*

15. H. 7. 7.  
Cromp. 40.  
1. R. 151.  
152.  
Cro. 34.

Note also, if a man be arrested for suspicion of felony by the Constable, or other person and after they shall have intelligence that there is no such felony committed, here they may set the party arrested at liberty againe, and they shall not be charged with the escape; for there can be no felony, where there is no felony committed.

44. *Aff. 12.*  
Cromp. 40.  
Cro. 14

But if a man be slaine, or that there be any other felony committed, and one is arrested for the same felony, or for suspicion thereof, though he that made the arrest, shall after have intelligence, and certaine knowledge, that the party arrested is not guilty of that offence, yet he or any other may not set the party so arrested at liberty, for now he must not be delivered by any mans discretion, but by course of Law; otherwise it will prove a voluntary escape, and so felony, or at least finable.

And yet if a Watchman shall take any man for suspicion of felony, he may inquire of his good name and fame, and if he findes him to be of good name and fame, he may let him goe. See the *old Justice of peace*, imprinted, Anno 1559. fol. 13. But it were more safe for the Watchman to deliver such suspected person to the Constable, Justice of peace, or to the Sheriffe, according to the stat. of *Winchester*. See *hic antea in Watch. cap. 16.*

25. E. 4. 3.  
39.

If a Justice of peace shall send for a felon out of the Gaole, and shall deliver him without baile, this seemeth to be a voluntary escape; and so felony in the Justice, otherwise where the Justice erreth *pro defectu scientie*: as to baile one that is not baileable; this is but a negligent escape.

If the Justice of Peace or Sheriffe shall baile one who is not baileable, this



this is an escape. *Finz. Escape 4. & Cor. 246.* (for a negligent escape, if it be in ignorance, *ut supra.*)

But if one that is brought before a Justice of P. for suspicion of felony, shall confesse the felony before the Justice, and yet he shall suffer the prisoner to goe (at large without baile) this is a voluntary escape. &c. *v. Cro.* 39.

*Now to proceed with Felonies by Statute. C A P. 107.*

**B**uggery committed with mankind or beast, is felony (without benefit of Clergy) 25. H. 8. 6. 5. Eliz. 17. it being a sinne against God, Nature, and the Law, and in ancient times such offenders were to be burned by the Common Law. *Fitz. 269. b. Fi. libro 2.*

One describeth this offence, to be *Carnalis copula contra naturam,*  
 & hac per confusionem } *Specierum, sc. home ou feme, ou brute beast.*  
 } *Sexuum, sc. home oue home, feme oue feme.*  
 Et ceo poet estre sans penetration; Car le use del corps despend le sede in troi ca-  
 ses, fait ceo Buggery deins ceo stat. sans penetration: Et issint fuit tenuis in lo case  
 le Sign' A. come jeo oye.

Burning of houses and stackes of corne, see before, *cap.* 105.

If a man maketh a bill or writing, and layeth or casteth the same at another mans doore, therein threatning to burne his house, if he giveth him not some money. &c. this hath been taken to be felony. See 6.H.7.f.13.4. And *Br. Cor. 213. quare.* what statute it is that the booke meaneth. Note by the statute of 8.H.6.cap.6. such offence was made treason; if after the offender did burne the house; but that statute of 8.H.6. standeth now repealed.

Congregations, and confederacies holden by Mafons, it is felony in the *P. Ed. 22*, causers thereof, and fineable in the Mafons that come to such congregations. *2. H. 6. cap. 1.*

Cutting out of any the Kings subjects tongues; or putting out their eyes, of malice pretended, is felony. 5. H. 4. 5. And for these the offender shall lose his life, lands, and goods. P. Fel. 17.

Cutting or breaking downe of Powdike, or other banks in Marshland, 32.H. 8. 11.  
maliciously, is felony. 2. & 3. Ph. & M. cap. 19. P. Fel. 36.

I Conjuratiō, or invocatiō of any evill Spirit, for any intent &c. *I. Jac. 13.*  
or to be counselling, or aiding thereto, is felony without benefit of Cler- *P. Fel 678.*  
gy. See *Exod. 22. 18. Dent. 18. 11. & Levit. 20. 27.*

2 To consult, covenant with, entertaine, imploy, feed, or reward any evill spirit, to or for any intent or purpose, is felony in such offenders, their aiders, and counsellors.

3. To take up any dead body, or any part thereof, to be employed or used

used in any manner of Witchcraft, is felony in such offenders, their aiders, and counsellors.

4 Also to use or practise Witchcrafts, Enchantment, Charme, or Sorcerie, whereby any person shall bee killed, pined, or lamed in any part of their body, or to bee counselling or ayding thereto, is felony: By the ancient common law such offenders were to bee burned, *Fir. 269. b.*

5 Also the second time to practise Witchcraft, &c. thereby to declare where any treasure may bee found, is felony.

6 Or where any goods lost, or stolne, may be found.

7 Or whereby any cattell or goods shall be destroyed or impaired.

8 Or to the intent to provoke any person to love.

9 Or to the intent to hurt any person in their body, though it bee not effected: All these are felony, *sc.* the second offence; and without benefit of Clergie.

Witches.

Now against these Witches, (being the most cruell, revengefull, and bloudie of all the rest) the Justices of peace may not alwayes expect direct evidence, seeing all their workes are the workes of darkenesse, and no witnesses present with them to accuse them; and therefore for their better discoverie, I thought good here to insert certaine observations, partly out of the book of discoverie of the Witches that were arraigned at Lancaster *an. Dom. 1612.* before Sir *James Altham*, and sir *Ed. Bromely*, Judges of Assise there; and partly out of M. *Bernards* guid to Grand Jury men.

*1 Sam. 18. 7*  
*1 Chro. 10. 13.*  
1 These Witches have ordinarily a familiar or spirit, which appeareth to them; sometimes in one shape, sometimes in another; as in the shape of a Man, Woman, Boy, Dogge, Cat, Foale, Fowle, Hare, Rat, Toad, &c. And to these their spirits they give names, and they meete together to christen them (as they speake) *Ber. 107. 113.*

2 Their said familiar hath some big or little teat upon their body, & in some secer place, where hee sucketh them. And besides their sucking, the Devill leaveth other marks upon their body, sometimes like a blew spot, or red spot, like a Flea-biting; sometimes the flesh suncke in & hollow (all which for a time may be covered, yea taken away, but will come againe to their old forme.) And these the Devills marks be insensible, and being pricked will not bleed, and bee often in their secretest parts, and therefore require diligent and carefull search. *Ber. 112. 219.*

These first two are maine points to discover and convict these Witches; for they prove fully that those Witches have a familiar, and made a league with the Devill. *Ber. 60.*

So likewise if the suspected be proved, to have been heard to call upon their spirit, or to talke to them, or of them, or have offered them to others

So.

So if they have beene scene with their spirit, or scene to feed some thing secretly; these are proofes they have a familiar, &c.

3 They have often pictures of clay or wax (like a man, &c. made of such as they would bewitch) found in their house, or which they roast, or bury in the earth, that as the picture consumes, so may the parties bewitched consume.

4 Other presumptions against these Witches; as, if they be given to usuall cursing and bitter imprecations, and withall use threatnings, to bee revenged, and their imprecations, or some other mischief presently followeth, *Ber. 61. 205.*

5 Their implicate Confession; as when any shall accuse them for hurting them or their cattell, they shall answer, You should have let mee alone then; or, I have not hurt you as yet, these and the like speeches are in manner of a Confession of their power of hurting. *Ber. 206.*

6 Their diligent inquiry after the sicke party, or coming to visit him or her, unsent for; but especially being forbidden the house.

7 Their apparition to the sicke party in his fits.

8 The sicke party in his fits naming the parties suspected; & where they bee or have beene, or what they doe, if truly.

9 The common report of their neighbours, especially if the party suspected be of kinne, or servant to, or familiar with a convicted Witch.

10 The testimony of other Witches, confessing their owne witchcrafts, and witnessing against the suspected, that they have spirits or markes; that they have beene at their meetings; that they have told them what harme they have done, &c. *Ber. 212. 223.*

11 If the dead body bleed upon the Witches touching it.

12 The testimony of the person hurt upon his death.

13 The examination and confession of the children (able and fit to answer) or servants of the Witch, especially concerning these six observations. *sc.* If the party suspected have a familiar, or any teate, or pictures; her threatnings and cursings of the sicke party, her enquiry after the sicke party; her boasting or rejoycing at the sicke parties trouble: Also whether they have scene her call upon, speake to, or feed any spirit, or such like, or have heard her foretell of this mishap, or speake of her power to hurt, or of her transportation to this or that place, &c.

14 Their owne voluntary confession, (which exceeds all other evidence,) *sc.* of the hurt they have done, or of the giving of their soules to the Devill, and of the Spirits which they have, how many, how they call them and how they came by them.

15 Besides upon the apprehension of any suspected, to search also their  
X x 2  
houses



houses diligently, for pictures of clay, or wax, &c. haire cut, bones, powders, bookes of witchcraftes, Charmes, and for pots or places where their spirits may bee kept, the smell of which place will stinke detestably.

Now to shew you further some signes, to know whether the sicke party bee witched.

1 When a healthfull body shall bee suddenly taken, &c. without probable reason, or naturall cause appearing, &c. *Ber. 169.*

2 When two or more, are taken in the like strange fits, in many things.

3 When the afflicted party in his fits doth tell truly many things, what the Witch, or other persons absent are doing or saying, and the like.

4 When the parties shall doe many things, strangely, or speake many things to purpose, and yet out of their fits know not any thing thereof.

5 When there is a strength supernaturall, as that a strong man or two, shall not bee able to keepe downe a child, or weake person, upon a bedde.

6 When the party doth vomit up crooked pinnes, needles, nailes, coales, lead, straw, haire, or the like.

7 When the party shall see visibly some Apparition, and shortly after some mischiefe shall befall him. *Ber. 173.*

Note for the better riddance of these Witches, there must good care bee had, as well in their examinations taken by the Justices, as also in the drawing of their Indistments, That the same bee both of them set downe directly in the materiall points, &c. *As*

That the Witch (or party suspected) hath used Invocation of some Spirit.

That they have consulted or covenanted with their Spirit.

That they imployed their Spirit, &c.

That they have fed or rewarded their Spirit.

That they have killed, or lamed, &c. some person, &c.

And not to indist them generally for being Witches, &c.

The difference betweene Conjuracion, Witch-craft, and Inchantment, &c. is this: *sc.* Conjurers, and Witches have personall conference with the Devill, or evill Spirit, to effect their purpose, See 1 *Sam. 28. 7.* &c. The Conjurers beleve by certaine terrible words; that they can raise the Devill, and make him to tremble; and by impailing themselves in a circle (which as one saith, cannot keepe out a mouse) they beleve that they are therein inscised, and safe from the Drvell whom they are about to raise; and having raised the Devill, they seeme by prayers, and invocation of Gods powerfull Names, to compell the devill to say, or doe what the Conjuror commandeth him.

The Witch dealeth rather by a friendly and voluntary conference, or agreement.

greement betweene him (or her) and the devill or familiar, to have his or her turne served, and in lieu thereof the Witch giveth (or offereth) his or her soule, bloud, or other gift unto the devill.

Also the Conjuror compacts for curiositie, to know secrets, or work miracles : & the Witch of inere malice to doe mischief, & to be revenged.

The Inchanter, Charmer, or Sorcerer, these have no personall conference with the Devill, but (without any apparition) worke and performe things (seemely at the least) by certaine superstitious and ceremoniall formes of words (called charmes) by them pronounced : or by medicines, hearbes, or other things applied above the course of nature, and by the Devils helpe, and covenants made with him.

Of this last sort, likewise are Sooth-sayers, or Wisards, which divine and foretell things to come, by the flying, singing, or feeding of birds, and unto such questions as bee demanded of them, they doe answer by the Devill (or by his helpe) *sc.* they doe either answer by voyce, or else doe set before their eyes in glasses, Chrystall stones, or Rings, the pictures or images of the persons or things sought for.

Imbesilling of the Kings Majesties Ordinance, armor, shot, powder, or *P. Fol. 33.* other habiliments for war, or viduals provided for souldiers, &c. if it bee by any person having the charge or custodie thereof, and to the value of xx. s. though at severall times, it is felony. *31. El. 4.*

Imbesilling of any Record, or parcell thereof, Writ, Returne, Pannell, *8 H. 6. 12.* Proesse, or Warrant of Attourney in the Chancery, Exchequer, Kings *P. Fol. 18.* Bench, Common place, or Treasurie, (by reason whereof any judgement shall bee reversed) it is felony in the parties, and in their counsellors, *Vide. Co. 11 33. b.* procurers, or abettors.

So the rasing of such record, is felony (within the said stat. of 8. H. 6) *2 R. 3. f. 10.* yet if a Judge doe imbesill or rase a Record, this is but misprison in the *Co. 11. 34.* Judge. *2. R. 3. Br. Cor. 174. & Treason 31.* *See 8. R. 2. ca. 4.*

But it seemeth the Justices of peace have not to doe with these two last sorts of felonies, (*sc.* with imbesilling, or rasing of Records) for that these felonies are committed to other Judges to deale with, by the same stat. of 8. *H. 6. P. Records 4. See before it felony, cap. 26.* *Lamb 529.*

Egyptian ; *sc.* if any person of the age of 14 ycares, or above, shall call *5. Eliz. 14.* himself an Egyptian; or shall bee in the company of such, or shall disguise *P. Fol. 26.* himselfe in apparell, speech, or otherwise like such, and shall bee or continue in England one moneth, at one or severall times, it is felony, without benefit of Clergie. *St. 1. 2. P. et M. 4.*

Note that these manner of persons, are besides all of them, for the most part theeves, cutpurfes, cozeners, or the like, and therefore the Just. of P.

shall doe well to bee carefull, not onely in the examining of them, but also to cause them to be well searched for the counterfeit Passes, stolne goods, and the like.

Every person which shall acknowledge any fine, recovery, deed inrolled, Statute, recognisance, baile, or judgement, in the name of any other person, not privie or consenting to the same, being thereof lawfully convicted, shall be adjudged a felon, without benefit of Clergy &c. 21. *Inc. Regis. cap. 26.*

Forestalling, or buying any merchandize before they come to the Staple, &c. was made felony by the statute 27. *Ed. 3. cap. 11.*

3 *Eliz. 14.*  
P. Fel. 26.

Forging of Evidences, *sc.* of any Deed, Charter, Obligation, Bill, Release, or other writing sealed, or of any Court Roll, or Will, or of any Acquittance; or to cause or assent to be made any such forged writing; or publishing any such writing, knowing the same to be false, the second offence is felony without benefit of Clergy. But it seemeth also that the Justices of peace have not to deale with this, for that they cannot well take notice of the former conviction. See *Co. 9. 118. b. & hic antea, tit. Felony, cap. 20.*

P. Fel. 17  
Stamf. 36. c.

Gaolers, (by duresse of imprisonment, and paine) inforcing their prisoner to become an approver, (that is, an accuser of others as coadjutors with him in felony) this is felony in such Gaoler, although the appellee, or party so accused, be acquit, or shall happen to die before he bee arrested upon the Appell, &c. *Stamf. 36. 14. E. 3. 10.*

If a Gaoler shall onely procure his prisoner to appell or accuse another of felony, this is felony, by *Scrop. An. 18. Ed. 3. Abr. d' Ass. 75. & Fit. Coron. 272.* And yet the statute of 14. *Ed. 3.* seemeth to extend onely where the Gaoler shall doe this by great duresse or paine.

Also by *Britt. f. 18.* if the Gaoler shall keepe his prisoner more strait than he ought of right to doe, by reason whereof the prisoner dye'h. this is felony by the common law in the Gaoler. And herein the booke called *Hiicap 93. a Speculum Iusticiar'* agreeth with *Britton*. And yet by the statute of *Westm. 1. cap. 12.* notorious felons, and such as be openly of evill name, or which bee rebellious, they shall have strong and hard imprisonment.

34. *Ed. 3. 22.*  
37. *Ed. 3. 12*  
P. Fel. 20.

Hawkes: whosoever findeth any Hawke that is lost, if he shall not immediately bring the same to the Sheriffe of the same County, to be proclaimed, &c. but doth imbecill, and carry away the Hawke, it is felony.

P. Hawks  
2. vide.

So is it in him whosoever taketh up any Hawke, and concealeth the same from the owner, or his Faulkner; or that taketh away any hawke from the owner, or stealeth any hawke, and carrieth it away, not observing the aforesaid ordinance.



Hunting of Deere or Conies in any parke, forrest, or warraine, unlawfully in the night time, or with visors, or other disguisings, and (upon examination by a Justice of peace &c.) to conceale the offence, or any offender therein, is felony in such concealer: but if such offender (upon his examination) shall confesse all the truth, then hee is but fineable. See hereof *antea tit. Hunting.* 1 H. 7. 7. 1  
P. Fel. 24.  
Lamb. 71.  
Dyer 50.

If any person to be arrested for such offence shall disobey the arrest, or if any person shall make rescous, so that the warrant (of the Justice of peace &c.) for arresting them be not executed, it is felony.

*Quere*, if such hunting and concealment, or resistance, be felony where the offenders killed no Deere, &c. it seemeth no: for all the *Presidents* doe run, *Occiderunt et asportaverunt, &c.* See *Lambert, Cromp. & West.*

Also *Quere*, if all such hunting disguised, or any other unlawfull hunting in the night time, be not felony, although the offender be never examined thereof, nor conceale the same as abovesaid. See the Statute, 1. H. 7. cap. 7. *in fine*, where it seemeth that all unlawfull hunting in the night (generally) is felony.

If any person shall take a tame beast, or other thing in a parke, by manner of robbery, it is felony: and the Statute seemeth to be but an affirmance of the common law in this point. 3 Ed. 1. 30.  
P. Fel. 24.

Imprisoning, or taking against their wills (without lawfull authority) any subject, in *Cumberland, Northumberland, Westmerland*, and the *Bish. of Duresme*, and carrying them away, to make a prey of them. 43 El. 13.

Or to be privie, consenting, procuring, aiding or assisting thereto:

Or to receive, carry, or give any consideration (called Blackmaile) for protection therein.

Or to burne any barne, or stacke of corne there: or to be aiding, procuring, or consenting thereto.

Every of these offences is felony, without benefit of Clergie, 43. El. cap. 13.

Marriage, *sc.* if any person being married, shall marry a second husband or wife, the first being alive &c. it is felony; except notwithstanding where the husband or wife have beene absent seven yeeres, and the one not knowing the other to be living within that time; except also persons divorced &c. by sentence in the Ecclesiasticall court; and except persons marrying within the age of consent. 1 Jac. 11.  
P. Fel. 4.

Multiplication of gold, or silver, or to practise that art, is felony. 5. H. 4. P. Fel. 11. 4. *Vide Dyer 88. Pl. 105.*

Money called Galley Halfe-pence, Suskin, or Dotkin, and all Scottish money of silver, to bring and put in payment any such, was made felonie by

by the Statute 3.H. 5.1. & 2.H.6.9. but they are now out of use.

*Pyraie*, concerning this offence, see the Statute, 28.H.8.cap.15. & *hic antea tit. Petty Treason.*

1 Jac. 3.1.  
P.Fel.3.

*Plague, sc.* if any person being infected with the plague, which being commanded by any officer to keepe his house, shall notwithstanding goe abroad, and converse in company, having an infectious sore upon him, it is felony.

P.Fel.37.

P. Murd 5.

*Poysoning, sc.* wilfull killing of any person by poyson, is wilfull murder in the offenders, their aiders, abettors, procurers, and counsellors, 1.Ed.6.12. Co.11.31. But the party poysoned must dye thereof within a yeare and a day after the poyson received: see *antea* in the title *Murder, cap.93.*

P. Jesuites 1.

Popish Priests, to receive, relieve, aid, or maintaine any such, &c. is felony; see hereof *antea tit. High Treason.*

P.Fel.5.

Popish Recusants, and such other Recusants or Sectaries, which (by the Statutes of 35.El.1. & 2.) are to abjure, if they shall refuse to abjure, or after abjuration shall not depart the Realme according as they shall bee appointed, or after such departure shall returne againe without the Kings speciall licence in that behalfe first obtained, it is felony without benefit of Clergy.

P.Fel.25.

P.Purv.30

Lamb.406.

Crompt.48.

*Purveyors, sc.* if any Purveyor, Taker, or other person, their deputies or servants, shall make any purveyance, takings, (or prises) for the Kings Majesties house, of any thing above the value of xii. d. (2.et 3.Ph.et M. cap.6.) in any of the six sorts following:

P.Purv.14.

23.H.6.1.2.

1 Without warrant, or commission under the great seale, and doe carry the same away against the will of the owner, it is felonie, 28.E.1. c.2.4. E.3.c.4. 36.E.3.c.2. (which warrant also they shall shew to the parties, before they doe take any thing from them.)

And note, that no such commission shall continue good, or be in force, above six moneths; and they must be written in the English tongue, so that every man may understand them. See the Statutes 36.E.3. ca.2. 23.H.6. cap.1.et.2.et 3. Ph.et M.c.6.

36 Ed.3.2.

23 H.6.12.

2 Or having a commission, shall buy or take (any thing) in other manner than is contained in their warrant or commission, P. Purv. 19. fel.25. Rast.350. 36.Ed.3.cap.2.

P.Fel.25.

P.Purv.19.

3. Or shall take any carriage in other manner than is comprised in their commission, Stat.36. Ed.3.2. P.19. 23.H.6.1.2.

36.E.3.c.2.

Rast.351.

Crompt.48.

4 Or having a commission, shall take and carry away any thing (above the value of xii.d.) against the owners will, or not paying for the same presently according as they can agree; or if the buyer and seller cannot agree, then to take any thing without being praised by the Constable and foure townsmen,

Townsmen, and by Indentures sealed by the Purveyor, &c. of the things so taken, &c. See the Statutes, 5 E.3.2. 10 E.3.1. 25 E.3.1. 36 E.3.2. 2 H.4.14. & 20 H.6.c.8.

And yet, if it be but of the value of 40 s. or under, some do hold that in this last case the Purveyor shall onely lose to the party grieved, the treble value of his goods so taken, and his costs, and treble damages: and that it shall be at the election of the owner of the goods to recover his said damages and costs, &c. either against the Purveyor, or against the neighbours, Preisors, and Towns adjoining, which being required, shall not resist the Purveyor or taker, doing contrary to the Statute. See the Statutes, 2 H.4.14. 20 H.6.8. & 23 H.6.c.1. & 2. But *quere*, for all those former Statutes do stand still in force, and be confirmed by these later Statutes, and by the Statutes made, 2 & 3 Ph. & M.cap. 6.

5 Or shall take more victuals or carriages for the Kings house, than hee shall deliver to the same house. 36 E.3.cap.4. *Fitz. Inst. of P.* 114. *P.Fel.25. P.Purv.4.*

6 Or shall take any sheep with their wools betweene Easter and Midsummer, at small prices; or more than be sufficient for the Kings house, and to carry them to his own house and sheare them. *Fitz. ibid.* *P.Fel.25. P.Purv.18. 25 E.3.15.*

In every of these cases it seemeth to be Felony in such Purveyor, their deputies and servants. And yet a Purveyor, or Taker, &c. may take victuall, or any such thing, according to his commission, at reasonable prices, to the use of the Kings Majesty, and according to the Statutes, although it be against the will of the Owner. *Br. Purv.1.* but then he must take it by the appreisement of the Constable and foure neighbours, &c. *ut supra.*

And yet *quere* whether the appreisement shall be made by the Constables and foure neighbours, or by the Lords of the Towns, or their Bailiffs; and also whether the said Indentures shall be made and sealed betweene the Purveyors and Owners, or betweene the Purveyors and Preisors, &c. for therein the said Statutes do somewhat differ.

But if a Purveyor shall take any provision for the Kings house, by force of his Commission, and shall after sell away the same, now his first taking is become tortious, & he punishable as a trespasser, if not as a Felon, *ab initio.* *Co.8.146.*

If the Kings Hunters, or Faulkoners, shall take any thing against the Owners will, without paying for the same presently, it seemeth to be Felony, 36 E.3.c.5.

If the Kings Purveyors, or takers of carriage, shall take any thing to spare another, they shall be imprisoned by the space of two yeers forswear the Court, and pay treble damages to the party grieved. 36 E.3.c.2.

If any Subjects Chator, or other Officer, shall take any Victuals, Come Hay, Carriage, or other thing against the owners consent, or do not pay for



it presently; it is Felony. *P. Purv.* 1. See the Statute 23 *H. 6. cap. 14.* here before, *tit. Purveyors, cap. 44.* And *quere* if the Felony of such Chastor be not altered herein by that Statute.

*1 M cap. 12*      Rebellious and unlawfull assemblies of any persons, to the number of  
*P. Fel. 27.* twelve or above, &c. their procurers or relievers, it was Felony in them all.  
*Vide hic cap. 85.*

*39 El. 4.*      Rogues being by the Justices of Peace, at their quarter Sessions, adjudged  
*P. Fel. 34.* incorrigible and dangerous, and therefore by them banished this Realm, if they shall return again into any part of this Realme without licence, it is Felony.

*1 Jac. 7.*      Rogues, adjudged (as aforesaid) incorrigible, or dangerous, shall by the  
*P. Vag. 4.* judgement of the same Justices, in their open Sessions of the Peace, be branded in the left shoulder, &c. And after such punishment, if any so punished shall offend again in begging, or wandring, contrary to the Statutes of 36 *El. 4.* or 1 *Jac. 7.* it is Felony.

*39 El. 15.*      Robbing in the day time of any dwelling house, or of any out-house, be-  
*Co. 11. 36.* longing and used to and with any dwelling house, as a \* Barn or Stable, &c.  
*B. C. 11. 13* (*un core quere si exo ouster l'offendor de son Clergie*) if it be to the value of  
*5 Ed. 6. 9.* five shillings or above, although no person be therein, or to rob any house  
*Lamb. 405* by day or night, any person being therein, and thereby to put in  
*23 H. 8. c. 7.* feare; or to rob any person in any part of his dwelling place, or house, the owner or dweller, his wife, children, or servants being therein, or in any place within the precinct of the same house or dwelling place (sleeping or waking;) or to rob any booth or tent in a Fair or Market, the owner, his wife, children, or any servant being there within the same (sleeping or waking;) every of these offences are now by Statute made Felony, and as penall as Burglary, by the losse of the benefit of Clergie. But to breake a house in the day time, although hee hath a felonious intent, yet if hee carrieth away nothing, this is no felony: for there must be an actuall felony done, besides the breaking of the house in the day. And by the report of  
*1 Lamb. 161.* *M. Dalsou* these Statutes shall be strictly construed (in favour of life) and according to the bare letter; so that if the robbery be done by day, and there be in the house but one servant onely, or there be in the house, booth, or tent, but a stranger or sojourner only, the fact shall not be adjudged an offence against these Statutes, *Crompt. 118.*

*3 Jac. 4.*      Servants unbrassiling their Masters goods. See hereof *antea*, *tit.*  
*P. Recus. 48.* *Theft.*

Souldiers, *sc.* if any subject shall passe out of this Realme, to serve any forreigne Prince, &c. not having before their passing taken the Oath of allegiance, &c. before the Officer thereunto appointed, it is Felony.

If any Gentleman, or person of higher degree, or any Captaine, or other Officer in Campe, shall passe out of this Realm to serve any forreign Prince, &c. or shall voluntarily serve any forreign Prince, &c. before they shall become bound to the Kings Majestie with two sureties (before the officer thereto appointed) with condition to this effect, *viz.* not to be reconciled to the Pope, &c. not to make or consent unto any conspiracie against the King, &c. but to disclose all conspiracies upon knowledge thereof, &c. it is felony. *Ibidem*

Souldiers entred of Record, and having taken prest money, or parcell of their wages of their Captain, if they shall not passe the sea, or goe with their Captain, or being in the Kings service shall depart without licence; it was made felony by the stat. 18. H. 6. c. 19. but see Co. 6. 27. that this Statute of 18. H. 6. 19. is now of little force, for that the ancient manner of retaining of Souldiers, to which this Statute hath reference, is now altogether changed, &c. And yet if a Souldier who is retained, or hath taken any prest money, shall at this day depart out of the Kings service without licence, it is Felony by the Statutes 7 H. 7. 1 & 3 H. 8. 5. which two last mentioned Statutes are yet in force, and are acts perpetual. *Co. ibid.* And by the said Statute of 3 H. 8. c. 5. such licence of departure must be made by the Kings Lievtenant. 18 H. 6. 10.  
P. Fel. 13.  
P. Cap. 3.  
Co 6. 17.

Souldiers, if they shall depart without licence, after they have served in the Kings wars, it is felony without benefit of Clergie; and none but the Lievtenant shall give a Souldier licence to depart, 2 E. 6. c. 2. Co. 6. 27. See 4 & 5 P. & M. c. 3. Raff. 50.

If any Mariner or Gunner, having taken prest wages to serve the King on the Sea, shall not come unto, or shall depart from their Captaine without licence, it is felony: yet *quere*, and see the Statute of 5 El. c. 5. at large, 5 El. 5. for that it doth relate to the aforesaid Statute of 18 H. 6. 19. which (as appears before) is now of little force. P. Fel. 13.

1 Souldiers, and Mariners, and all idle persons, wandring as Souldiers or Mariners, which shall not settle themselves to some lawfull course of life, but shall wander up and down idly, or beg up and downe, it is Felony in them, without benefit of Clergie. 39 El. 17.

2 So it is if any idle or wandring Souldier or Mariner comitting from beyond the Seas, or from the Seas, shall not have a lawful testimonial under the hands of some Justice of Peace neer the place of his landing, setting down therein the place and time for his landing, and the place unto which he is to passe, and a convenient time of his passage. 39 El. 17.

3 Or having such testimoniall, if they shall wilfully exceed the time therein limited above 14 days. *Ibid.*

4 Or if they shall forge or counterfeit any such testimoniall or shall have any such forged testimoniall, knowing the same to be forged. &c. *ibid.*

5 Or being retained into service after his arraignment &c. if hee shall depart within the yeer without licence of his Master; in all these former cases, it is Felony in such souldier, &c. without any benefit of C'ergie.

And yet see the Statute of 43 *El.* 3. that souldiers and mariners, begging, or counterfeiting a Certificate from their Captaine, &c. shall be adjudged and punished but as Rogues. See *hic antea 1st. Rogues.*

Transporting or sending any live sheep out of the Kings Dominions, the second offence is Felony.

It was made Felony for any man to carry or to transport any wools, leather, woofels, or lead, out of *England* or *Ireland*; but see other Statutes since made concerning the same. *Anno 38 Ed. 3. c. 6, 7. & 14 R. 2. c. 1. & 5.*

Witches, see *Conjurat.*

Women, *sc.* to ravish a woman where shee doth neither consent before nor after; or to ravish any woman with force, though she do consent after, it is Felony: and the offender shall have no benefit of Clergy. 18 *El. c. 6.* *Br. Cor. 204. vide Dyer 202.*

If a man take away a maid by force, and ravish her, and after she giveth her consent, and marrieth him, yet it is a Rape.

Now Ravishment is here taken in one and the same signification with Rape, which is a violent deflowring of a woman, or a Carnall knowledge had of the body of a woman, against her will. 9 *E. 4. 36. fil. 2. & Co. l. 123.*

A woman that is ravished ought presently to levy open Huy and Cry, or to complain thereof presently to some credible persons as it seemeth. *Glanville 115.* See the Statute. *De officio Coronatoris, 4 E. 1.*

*Fleta* saith, that the complaint must be made within forty days, or else the woman may not be heard. *Lib. 3. cap. 5.* But in some other Counties this ought to be complained of the same day or night that the crime is committed, (*ut dicitur*) the reason is, *quia lapsu diei hoc crimen praescribitur. Minsh.*

And yet in an Indictment of Rape, there is no time of prosecution necessary, for *Nullum tempus occurrit Regi.* But in case of an Appeale of Rape, if the woman doth not prosecute it in convenient time, shee shall be barred.

If a woman at the time of the supposed Rape do conceive with child by the Ravisher, this is no Rape, for a woman cannot conceive with childe, except she do consent. *Finch. lib. 2.*

And yet if a man ravish a woman, who consenteth for feare of death or dures,



dures, this is ravishment against her will, for that consent ought to be voluntary and free.

All such as are present, abetting, aiding, or procuring another to commit Rape, are principall Felons.

If a man and a woman be present, with purpose that the man shall by violence carnally know the body of another woman there also present, against her will, and the man doth the fact in the presence of the other woman, she so present (as well as the man) shall be a principall Ravisher; the man the agent, and the other coadjutant: And so one woman may be a principall to the Ravishment of another. *Dod. 138.*

It is a good plea, in an appeal of Rape, to say that before the ravishment *Stamf. 24.* supposed, she was his Concubine, as *M. Bracton* saith.

And yet to ravish an harlot against her will, is felony; for, *licet meretrix Cromp. 47.* fuerit ante, certe tunc temporis non fuit, cum nequitie ejus reclamando consentire noluit. *Bract. 1. 2.*

Also to take any maide, widow, or wife (having lands or goods, or being heire apparent to her ancestor) against her will unlawfully, is Felony; and to receive any such woman so taken, knowing thereof, or to procure and abet the same, is Felony; and they shall all be reputed as principals; and as well the principals, as accessaries before the offence, shall all lose the benefit of Clergy. *39 El. cap. 9.*

But this act doth not extend to any person taking any woman, only claiming her as his ward, or bond-woman.

The taking away of a maid under sixteen yeers of age, without the consent of her parents or Governours, or contracting marriage with her, or deflowering her, is no Felony. but yet shall be punished with long imprisonment, without bail, or with grievous fine.

But unlawfully and carnally to know and abuse any woman child under the age of ten yeers, is felony, although such child consents before, *Crom. 47.* and the offender shall have no benefit of Clergy.

Also to take away a mans wife with the goods of her husband, whether it be against her will, or against her husbands will, seemeth to be Felony, by the Statute of *West. 2. cap. 24.* the words thereof are, *De mulieribus abductis cum bonis virorum suorum, habeat Rex sectam de bonis sic asportatis.*

But if the wife take her husbands goods, and so goeth away voluntarily with another man, and with those goods, or delivereth those goods to another man, these two last cases seem not to be Felony.

If any woman be delivered of any issue of her body, male or female, which, if it were borne alive, should by the Laws of this Realme be a ba-

it presently, it is Felony. *P. Purv. 1.* See the Statute 23 *H. 6. cap. 14.* here before, *tit. Purveyors, cap. 44.* And *quere* if the Felony of such Chasor be not altered herein by that Statute.

*1 M cap. 12*     Rebellious and unlawfull assemblies of any persons, to the number of  
*P. Fel. 27.* twelve or above, &c. their procurers or relievers, it was Felony in them all.  
*Vide hic cap. 85.*

*39 El. 4.*     Rogues being by the Justices of Peace, at their quarter Sessions, adjudged  
*P. Fel. 34.* incorrigible and dangerous, and therefore by them banished this Realme, if they shall return again into any part of this Realme without licence, it is Felony.

*1 Jac 7.*     Rogues, adjudged (as aforesaid) incorrigible, or dangerous, shall by the  
*P. Vag. 4.* judgement of the same Justices, in their open Sessions of the Peace, be branded in the left shoulder, &c. And after such punishment, if any so punished shall offend again in begging, or wandring, contrary to the Statutes of 36 *El. 4.* or *1 Jac. 7.* it is Felony.

*39 El. 15.*     Robbing in the day time of any dwelling house, or of any out-house, be-  
*\* Co. 11. 36.* longing and used to and with any dwelling house, as a \* Barn or Stable, &c.  
*B. C. 11. 13* (*un core quere si ceo quister l'offender de son Clergie*) if it be to the value of  
*7 Ed. 6. 9.* five shillings or above, although no person be therein, or to rob any house  
*Lamb. 405* by day or night, any person being therein, and thereby to put in  
*23 H. 8. c. 1.* feare; or to rob any person in any part of his dwelling place, or house, the owner or dweller, his wife, children, or servants being therein, or in any place within the precinct of the same house or dwelling place (sleeping or waking;) or to rob any booth or tent in a Fair or Market, the owner, his wife, children, or any servant being there within the same (sleeping or waking:)

every of these offences are now by Statute made Felony, and as  
*See Co. 11.* penall as Burglary, by the losse of the benefit of Clergie. But to breake a  
*31, 32, &* house in the day time, although hee hath a felonious intent, yet if hee car-  
*36.* rieth away nothing, this is no felony: for there must be an actuall felony  
*Stamf. 126.* done, besides the breaking of the house in the day. And by the report of  
*36* *M. Dalsou* these Statutes shall be strictly construed (in favour of life) and  
*23* according to the bare letter; so that if the robbery be done by day, and there  
*P. 1* be in the house but one servant onely, or there be in the house, booth, or  
*P. 1* tent, but a stranger or sojourner only, the fact shall not be adjudged an of-  
*36* fence against these Statutes, *Crompt. 118.*  
*Ref* *3 Jac. 4.*  
*CR* *P. Recus. 48.*

Servants imbeasling their Masters goods. See hereof *antea*, *tit. Theft.*

Souldiers, so if any subject shall passe out of this Realme, to serve any forreigne Prince, &c. not having before their passing taken the Oath of allegiance, &c. before the Officer thereunto appointed, it is Felony.

If any Gentleman, or person of higher degree, or any Captaine, or other Officer in Campe, shall passe out of this Realm to serve any forreign Prince, &c. or shall voluntarily serve any forreign Prince, &c. before they shall become bound to the Kings Majestie with two sureties ( before the officer thereto appointed ) with condition to this effect, *viz.* not to be reconciled to the Pope, &c. not to make or consent unto any conspiracie against the King, &c. but to disclose all conspiracies upon knowledge thereof, &c. it is felony. *Ibidem*

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P. Fel. 13.  
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Souldiers, if they shall depart without licence, after they have served in the Kings wars, it is felony without benefit of Clergie; and none but the Lievtenant shall give a Souldier licence to depart, 2 E. 6. c. 2. Co. 6. 27. See 4 & 5 P. & M. c. 3. Raff. 50.

If any Mariner or Gunner, having taken prest wages to serve the King on the Sea, shall not come unto, or shall depart from their Captaine without licence, it is felony: yet *quere*, and see the Statute of 5 El. c. 5. at large, 5 El. 5. for that it doth relate to the aforesaid Statute of 18 H. 6. 19. which (as appears before) is now of little force. P. Fel. 13.

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2 So it is if any idle or wandering Souldier or Mariner coming from beyond the Seas, or from the Seas, shall not have a lawful testimonial under the hands of some one Justice of Peace neer the place of his landing, setting down therein the place and time for his landing, and the place unto which he is to passe, and a convenient time of his passage. 39 El. 17.

3 Or having such testimoniall, if they shall wilfully exceed the time therein limited above 14 days. *Ibid.*



4 Or if they shall forge or counterfeit any such testimoniall or shall have any such forged testimoniall, knowing the same to be forged. &c. *ibid.*

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And yet see the Statute of 43 *El.* 3. that souldiers and mariners, begging, or counterfeiting a Certificate from their Captaine, &c. shall be adjudged and punished but as Rogues. See *hic antea 1st. Rogues.*

8. *El.* 3.

P. *Fel.* 2.

27 *E.* 3. c. 3.

7, 12, & 18

Transporting or sending any live sheep out of the Kings Dominions, the second offence is Felony.

It was made Felony for any man to carry or to transport any wools, leather, woofels, or lead, out of *England* or *Ireland*; but see other Statutes since made concerning the same. *Anno* 38 *Ed.* 3. c. 6, 7. & 14 *R.* 2. c. 1. & 5.

13 *E.* 1. 34.

P. *Fel.* 14.

6 *R.* 2. c. 6.

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Women, *sc.* to ravish a woman where shee doth neither consent before nor after; or to ravish any woman with force, though she do consent after, it is Felony: and the offender shall have no benefit of Clergy. 18 *El.* c. 6. *Br. Cor.* 204. *vide Dyer* 202.

If a man take away a maid by force, and ravish her, and after she giveth her consent, and marrieth him, yet it is a Rape.

Now Ravishment is here taken in one and the same signification with Rape, which is a violent deflowring of a woman, or a Carnall knowledge had of the body of a woman, against her will. 9 *E.* 4. 36. *fi. l.* 2. & *Co. l.* 123.

*Stamf.* 12.

*Crompt.* 100.

A woman that is ravished ought presently to levy open Huy and Cry, or to complain thereof presently to some credible persons as it seemeth. *Glanville* 115. See the Statute. *De officio Coronatoris*, 4 *E.* 1.

*Fleta* saith, that the complaint must be made within forty days, or else the woman may not be heard. *Lib.* 3. cap. 5. But in some other Counties this ought to be complained of the same day or night that the crime is committed, (*ut dicitur*) the reason is, *quia lapsu diei hoc crimen praescribitur. Minsh.*

And yet in an Indistment of Rape, there is no time of prosecution necessary, for *Nullum tempus occurrit Regi.* But in case of an Appeale of Rape, if the woman doth not prosecute it in convenient time, shee shall be barred.

*Britton.* 45.

*Stamf.* 24.

9 *E.* 4. 6.

*Br. Parl.* 55.

If a woman at the time of the supposed Rape do conceive with child by the Ravisher, this is no Rape, for a woman cannot conceive with childe, except she do consent. *Finch. lib.* 2.

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All such as are present, abetting, aiding, or procuring another to commit Rape, are principall Felons.

If a man and a woman be present, with purpose that the man shall by violence carnally know the body of another woman there also present, against her will, and the man doth the fact in the presence of the other woman, she so present (as well as the man) shall be a principall Ravisher; the man the agent, and the other coadjutant: And so one woman may be a principall to the Ravishment of another. *Dod. 138.*

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Also to take any maide, widow, or wife (having lands or goods, or being heire apparent to her ancestor) against her will unlawfully, is Felony; *3 H. 7. 2. P. Fel. 16.* and to receive any such woman so taken, knowing thereof, or to procure and abet the same, is Felony; and they shall all be reputed as principals; and as well the principals, as accessaries before the offence, shall all lose the benefit of Clergy. *39 El. cap. 9.*

But this act doth not extend to any person taking any woman, only claiming her as his ward, or bond-woman.

The taking away of a maid under sixteen yeers of age, without the consent of her parents or Governours, or contracting marriage with her, or deflowering her, is no Felony. but yet shall be punished with long imprisonment, without bail, or with grievous fine. *43 & 5 P. & M. P. Women. 7. 8. See Co. 3. 37 & c. 18 El. 7. P. Fel. 14.*

But unlawfully and carnally to know and abuse any woman child under the age of ten yeers, is felony, although such child consents before, *Crom. 47.* and the offender shall have no benefit of Clergy. *13 As. 6. Er Cor. 77. Stamp 94. Cromp 35.*

Also to take away a mans wife with the goods of her husband, whether it be against her will, or against her husbands will, seemeth to be Felony, by the Statute of *West. 2. cap. 24.* the words thereof are, *De mulieribus abductis cum bonis virorum suorum, habeat Rex sectam de bonis sic asportatis.*

But if the wife take her husbands goods, and so goeth away voluntarily with another man, and with those goods, or delivereth those goods to another man, these two last cases seem not to be Felony. *P. Cor. 455. Stamp. 37.*

If any woman be delivered of any issue of her body, male or female, which, if it were borne alive, should by the Laws of this Realme be a bastard,

stard, and that she endeavour (privately, either by drowning or secret burying thereof, or any other way) so to conceale the death thereof, that it may not come to light, whether it were borne alive, or not, but be concealed; in every such case the said mother so offending shall suffer death as in case of murder, except she can prove that the child was born dead. 21 Jac. Regis. c. 27.

Now the mothers proof that her child was borne dead must be by witnesses, And therefore if the mother will call for no help at the time of her labour, but secretly be delivered, and then the child be found dead, it is a strong presumption against her that she murdered it; and the rather, for that it is a received opinion, that if the child were dead in her body, shee could not then be delivered without the help of some others,

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Accessaries. CAP. 108.

**In treason.** IN high treason there be no Accessaries, for all the advisers, counsellors, persuaders, and assistants therein, be principals, and as much as if they were actors or doers: yea, all that shall advise, counsell, perswade, command, procure, or hire another to doe any treason or felony, (they being indeed the very cause of the fact) may well seem as culpable, if not more, than the principall actor, for the rule is, *plus peccat author quam actor*; examples also we have hereof in the book of God, Gen. 3. The Serpent the procurer of the first sin, by Gods owne judgement, had a greater punishment, than the woman or man: Again, 2 Sam. 12. 9. David is told (from God) that he had killed Urias, whereas he onely commanded Ioad to kill him, &c. yet in case of Felony our law is otherwise.

**Stamf 40.** Note, whatsoever offence doth make a man accessary in Felony, the same, or like offence, maketh him a principall in high treason.

**Br. Cor. 135.** But yet it seemeth this is to be understood of accessaries before the treason, for receiving, aiding, and comforting a Traitor after the offence (knowing the same) was holden to be but misprision of treason, 12 & 13 El. **Dyer 296.** And yet by some other authorities, the receiving of Traitors after the offence, knowing thereof, is holden to be treason: see 3 H. 7. 10. **Br. Treason 19.** **Hussey** Chiefe Justice, and **Crompt. 42. b.** who alledgeth the book called, *The Exposition of the termes of the Law*, tit. *Accessaries*.

Sir **Edw. Coke l. 57.** telleth us, that in the highest and lowest offences there be no accessaries, but all are principals; As in the highest offence, which is *Crimen laesa Majestatis*, there be no accessaries; And so in the lowest,



lovest, as in Riots, Routs, forcible Entries, and other trespasses *vi & armis*.

In cases of *Premunire*, there may be Principall, and Accessary, by some opinions 44. E. 3. & 8. H. 4. 6. b. *Huls, Br. Premunire, 46. Tamen quere*, for these offences seeme more like a trespassse than a felony, &c. And upon the stat. of 27. E. 3, the offenders shall forfeit nothing if they appeare at the first day; but if they appeare not at the first day, then (for their contumacie) they shall be out of the Kings protection, and shall forfeit their lands and goods to the King, which are as a poine given by the statute, but it is not attainder: also if the Principall appeare not, or happen to be dead, yet the other shall answer and therefore it seemeth that they be all principals in cases of *Premunire*. *Br ibid. 4.*

In petty treason there is a principall, and there may be accessaries, as there is in felonies,

In felony there be two sorts of accessaries:

*In felonie.*

The one is accessarie before the felony committed.

The other is accessarie after the offence done.

But he that is present at the time of the felony committed (be it in case of murder, robbery, burglary, or larceny) is a principle at this day if hee were either a procurer, or mover, or be aider, comfortor, or consentor thereto, although at that present he doth nothing: see before cap. 77. *Plo. 100. a. 11. H. 4. Br. Coron. 188. & 228. & Inditement 5.*

And yet concerning murder, note that in every appell, the count is, that every principall *luy comp<sup>a</sup>. & ferust mortalmant, &c.* But those words are but words of form. and the striking of him which killeth the party shal be adjudged the striking of all those which command, procure, move, aid, or consent thereto, when they be present; and they which give the stroke or wound may be termed principals in fact, and the other being present, principals in law, see *Plo. fol. 97. b. & 100. a.*

If one being present at the killing or robbing of a man, doth nothing, yet would have aided his companion, if there had been need, he shall be adjudged a principall *Fitz. Coron. 309.* *Stamf. 40 b. Brum*

But if one be present by chance, and seeth when another is slain, or robbed, or when any other felony is committed, and doth not come in company with the felons, nor is of their confederacie, although he doth not make any resistance, or disturb the felon, or levie buy and cry, nor discovereth the same but concealeth it, yet it is no felony in him but misprision of felony, and fineable a sa trespassse. *F. Cor. 295. Stamf. 37. 43 b. Comp. 44. 14 H. 7. 31.*

Also in some cases a man may be a principal, although he be not present at the time of the felony committed: as if *A.* knowing drink to be poysoned,

ed, perswades *B.* to drinke it, and after *B.* (in the absence of *A.*) doth drinke it, and dyeth thereof, *A.* is here a principall murderer. *Co: 4. 44.* See other like cases of poysoning *antea sit. Murder. & postea sub hoc sit. Accessaries,*

Note that the accessory fact in felony, whether before or after, though it be another offence, and distinct from the principall fact, yet it is also felony; and they shall have the same punishment which the Principall shall have.

Note also when a statute maketh or ordaineth an Act or offence to bee treason, or felony, which was not so before by the Common Law, and yet the statute saith not that the abettors, aiders, comforters, or consenters to the doing thereof shall be also felons, yet it shall be felony in them, for that they were the causes of the doing or committing of the offence, which (it may be) otherwise might had not been committed. See *Lamb. pag. 271, 280. 19 H. 6 fol. 47. & 11. H. 4. fol. 13. Fitz. Coron. 228.*

And so it seemeth of receivers, &c. after the offence, *Lamb. 281.* for where a statute maketh any thing felony, it is made as felony to all intents and Purposes.

The Book called the *Mirror of Iustices* makes divers manner of Accessaries: *sc.*

Those which command.

Those which counsel.

Those which consent.

Those which are partakers in the gain.

Those which know thereof, and doe not disturb or hinder the same.

Receivers knowing thereof.

And those which are present at the fact: but these last (at this day) are Principals, as aforesaid.

Before the fact.

And now our bookes doe divide them into two sorts: *sc.* Accessaries before the felony (or fact,) and Accessaries after the fact.

Accessaries before the felony, are such as shall will, command, hire, procure, move, conspire, counsel, abbet, or consent to commit any petie treason, murder, robbery, rape, burglary, or larceny, but are not present thereat; yet all such are thereby felons, when the felony is committed.

But here note some differences are to be observed, when the principall and chiefe offender, or actor, doth not accomplish the fact altogether in the selfe-same sort, as it was before-hand agreed and plotted betweene him and the accessarie: and therefore if *A.* command *B.* to lay hold upon *C.* and *B.* goeth and robbeth *C.* this is no felony in *A.* (if he be absent when the robbery is done) for this commandement might have been performed without any robbery.

But

*Præcipiendo*  
*Persuadendo*  
*Consulendo*  
*Consensendo*

But if the commandement had been to beat C. and the partie commanded doth kill C. or beateth him so that he dieth thereof, A. shall be accessarie to his felonie and murder; for it is hazard in beating a man, that hee may die thereof. F. cw. 314. 1

A. commandeth B. to rob C. and in attempting this, B. killeth C. A. shall be accessarie to this murder; for in attempting to rob C. the commandement of A. was pursued, and then when the commandement is pursued, and in the execution thereof another thing falleth out, he which gave the commandement, shall be adjudged a party thereto, for that his commandement was the cause thereof. Pl. 475.

He that commandeth or counselleth an evill or unlawfull act to be done, shall be adjudged accessary to all that shall ensue upon the same evill act, but not to any other distinct thing. *Ibid.* As if

A. commandeth B. to steale a horse, and he stealeth an oxe; or to steale a white horse, and he stealeth a blacke; or to rob a man by the high-way of his money, and he robs him in his house of his plate; or to burn the house of B. and he burneth the house of C. these be other acts and felonies than A. commanded to be done, and therefore A. shall not be adjudged accessary to them. Pl. 475.

But if B. shall commit the same felony which A. did command or counsell to be done, though he doth it at another time, or in another place, or in another sort than A. did command or counsell, yet here A. shall be accessarie thereto; for *Mandata illicita recipiunt latam & extensam interpretationem. Vide Ba. 66, 67.* Pl. 475.

As if A. doth counsell B. to kill C. by poyson, and he killeth him with his dagger, or by other violence; or to kill C. by the high-way, and hee killeth him in his house; or to kill him one day, and he killeth him upon another day; in these and the like cases A. shall be accessary to the murder.

A. counselleth B. to poyson C. and to that end A. buyeth poyson, and delivereth it to B. who tempereth it in an apple, and delivereth it to C. with intent to poyson him, and C. knowing nothing, giveth the apple to E. who eateth it, and dieth thereof; here A. is not accessary to the murder of E. yet it is murder in B. Lamb. 383. Pl. 475, 476.

A. Counselleth or commandeth B. to kill C. and after and before he hath killed him A. doth repent him, and countermands it, charging B. not to kill C. and yet after B. doth kill C. here A. shall not be adjudged accessary to the death of C. for the Law adjudgeth no man accessary to a felony before the fact, but such as continue that mind at the time that the same felony is done and executed. Pl. 475.

But if A. counselleth a woman to murder the childe in her bodie Dyer 186.  
Z z (when 60. 7. 2. a)



26. *Aff. 52.* A man may be an accessarie to an accessarie, as if he shall receive, relieve  
*F. Cor. 196.* or comfort him who is accessary to a felon, knowing the same *B. Cor. 104.*  
*P. Appale 3.* Although the accessarie shall be punished, and shall have judgement of  
*Co. 4. 43.* life and member, as well as the principall which did the felonie, yet the  
*9. 117. 119* principall (yea all the principals) ought first to be attainted (by verdict,  
*Pla. 98. 99.* confession, or utlary) before the accessarie can be charged or put to answer  
*Cro 34 107.* (as an accessary :) and the acquittall of the principall, is the acquittall of the  
 accessarie ; for *ubi non est principalis, non potest esse accessarius* : but yet the  
 accessary shall be attached and surely kept (and shall be committed by the  
 Justice of peace, &c.) untill the principall be attached and attainted. See  
*Stat. West. 1. cap. 14.*

But though the accessary in felony cannot be proceeded against untill  
 the principall be tried yet if a man upon subtilty and malice set a mad man  
 by some device to kill another, and he doth so, now forasmuch as the mad  
 man is excused because he can have no will or malice, the Law accounteth  
 the inciter as principall, though he be absent, rather than the crime shall  
 goe unpunished. 33. *Eliz. Ba. 57.*

And if the principall be attainted, though erroneously, that shall not a-  
 vaile the accessarie, but he must answer, &c. *Co. 9. 68. b. & 119.*

*Co 4. 43. 44.* If the principall dye before he be attainted, or if the principall be found  
*P. Cor. 166.* not guiltie by verdict, or be found by verdict, that he slew the other in his  
*& 378.* owne defence, or if after conviction, by verdict, confession, or utlary, and  
*Vide Br.* before judgement, he hath his clergy, or getteth his pardon, the accessary  
*Coro 70. 71.* in all these cases shalbe discharged : but it is not safe for the Justice of peace  
*80. 83 86.* to discharge such accessarie out of Sessions.  
*132. 138.*

*Crom 34. b.* A man killeth another *se defendendo*, or by misadventure, and it is so  
 found upon his triall, the accessarie shall be discharged, for that in these ca-  
 ses the principall shall not have judgement of death. *Et omne accessar. se-  
 quitur suum principale.* See *Br. forf. 13.*

### Rules concerning felony. CAP. 109.

*1 E 6.*  
*Br. Cor. 178.*

**I**F a man committeth felony in the time of one King, he may be charged  
 and arraigned for it after, in the time of another King.

*13 E. 4. 9.*  
*Br first suit*  
*3.*

If a man doe commit murder, steale goods, or doe any other felo-  
 ny in one county, and then flyeth into another county, and is taken there,  
 and brought before a Justice of Peace there, he shalbe (by the Justice) im-  
 prisoned in the gaole of the county where he is taken ; and after shalbe re-  
 moved by the Kings writ into the gaole of the county where he committed  
 the felony. But for those that doe inform against such felons, the said Ju-  
 stice

Justice shall bind such informers over to appear, and to give evidence against such felons, at the next generall gaole delivery to be holden in that county where the triall of such murder or felony shall be; whither also the said Justice must certifie such information taken by him.

If a man committeth a robberie, or stealeth a horse, beast or other goods in one county, and doth carry, leade, or drive the goods into another county, it is felony in every county whither hee doth carrie or drive those goods, and the offender may be indicted, or appealed of felony, for theft, and be arraigned, and have his judgement in any of those counties: but the offender cannot be appealed or indicted of robbery, but onely in the county where the robbery was done, for it is not robbery in any other county; for robbery must be done to the person of a man. *Br. Cor.* 140. & *Inditement* 26. 4 H. 7. 5.  
34 H. 8.  
Br. Cor. 178.  
Co. 7. 2.

If a man doe steale another mans goods, and after another stealeth the same from him, the owner of the goods may charge the first or second felon at his choice. 13. E. 4. 3.  
4 H. 7. 5.

Also if a man shall deliver cloth to a tailor to make a garment, if the cloth be stolen from the tailor, the offender may be charged and indicted for stealing the same, either at the owners suit, or at the Tailors. P. R. 130.  
Cro. 70.

Also an indictment may be, *Quod bona & catalla cujusdam hominis ignotis felonice cepit*. See here before cap. 103. And any man may in such case both informe the court, and by their direction may prefer an indictment against the felon, and give evidence to the Enquest therein. Dyer 99.

And so if the owner be known, but will not charge the felon therewith, any other person, (especially after proclamation made in the Court, that if any will inform or give in evidence for the king, he shalbe heard) may safely come in, and may informe the court, preferre an indictment, and give in evidence for the King, against the felon without any danger of conspiracie, because it is for the Kings advantage, to have the forfeiture of the felons goods: yea, in the two former cases, if the Justice of peace shall heare of any person that can informe any materiall thing against such a felon, or against any felon, the Justice in his discretion may send for him, take his information, and may bind him to give evidence against such felon: for every one shall be admitted to give evidence for the King. *Stamf.* 163. 35. E. 6. 19.  
Fitz. cons.  
Fitz. 119. a.  
Stamf. 163.  
173.

Also if any robbery or theft be committed, and the party robbed or other owner of the goods will not charge the felon therewith, yet it seemeth every Justice of peace may cause such felon (or any person suspected for such felonie) to be apprehended, and may examine then thereof; and also may send as well for the partie robbed, &c. as for all such other persons as can informe any thing materiall concerning the said felonie, and

may

See *Stamf.*  
42.  
such a mat-  
ter.

A felon who fled to the house of his naturall brother, and the brother shut the fore-doore against the pursuers, and conveyed the felon out of his house at a backe doore, whereby he gat to the Church; this brother was adjudged an accessary for it, for he was a meanes of the escape.

*Quere* if a felon flyeth, and commeth to his friends house, and his friend shutteth the doore against him, and yet maketh the pursuers beleeve that hee is in the house, whereas hee escapeth, if this make not the friend an accessary.

9.H.4.1.  
Br. Cor. 16.  
See Br Esc.  
43.

A man hath a felon in his house, and (knowing of the felonie) suffereth him to goe his way, and so to escape; yet this is no felony, for that he had not arrested him of the felony before: neither can such an escape make him an accessary, except he were any meanes of the escape.

Rescous.

If one doe rescue him that is arrested for the felony, he is a principall felon, and not an accessarie.

1 H 7.6.  
*Stamf* 43. c  
Buying  
stolen goods  
12 Aff. 69.  
35. E. 3 39.  
9. H 4. 41.  
*Stamf.* 43. b

Receiving, or buying of stolen goods, knowing they were stolen, maketh not a man accessarie to the felonie, unlesse he receiveth also (or aideth) the felon himselfe: yet M. *Crompton* maketh a *quere* thereof, and alleageth some cases to the contrary: See *Crompt. fol.* 41, 42, 43.

But herein there seemes a difference betweene a buyer (being a stranger to the felon, and who for valuable consideration shall buy such goods) and a receiver or buyer, who is an adherent or companion to the felon, or that by covin shall receive or buy such goods. See the preamble to the statute 2 & 3. *Ed. 6. ca.* 24.

*Crompt.* 43.

A man buyeth stolen goods for 5. s. which are worth 20. s. this maketh the buyer an accessary, by the opinions of M. *Crom. fol.* 43. and of Sir *Nich. Hyde* in his charge at Lent Assises, at *Cambr.* 1629. for it may well appeare by the price, that the seller came not truly by them, and therefore it is safe to lay hold off such sellers, as shall sell any thing at any great under value.

Taking a-  
gain stolen  
goods.  
Br. Cor. 112.  
Lamb. 286.  
Crom. 37.  
41 42.  
Pr. 131.  
Termes of  
the Law. 184  
Dyer 502.  
Fitz Cor.  
353.

A man pursueth and taketh a felon that hath stolne his goods, and then taketh his goods againe, and suffereth the theefe to escape hee is no accessary thereby (by some opinions) for hee may *in initio agere civiliter*, or *criminaliter*, at his pleasure, as M. *Bracton* writeth, *Stam.* 28. *quare tamen*, for M. *Stamf. f.* 40. and M. *Finch, li.* 2. say, that if hee takes his goods againe from the felon to favour him, this is theftboot (the punishment whereof in ancient time was of life and member, though at this day it bee punishable onely by ransome and imprisonment: ) And yet by some it is holden to bee felony at this day. The like seemeth to bee if he takes his goods againe from the felon, and then favoureth him and letteth him goe.

But



But if the party robbed take money or other goods, &c. of the thiefe, 6 E. 6: Lamb 186. Crompt. 41. P.R. 131. Er. Cor. 133. to the end hee shall favour him, or shall not give evidence against him, whereby the thiefe escapeth, now is hee an accessary to the felony of his owne goods, by good opinion; though some other seeme to take this for theftboot, and so to bee punishable at this day, onely by ranfome and imprisonment, as aforesaid.

If the party robbed, or if he that shall have any goods stoln from him, after complaint by him made of the felony (to a Justice of peace or to the Constable) shall then take his goods againe, or otherwise bee compounded withall, and will not prosecute this matter against the felon any further, but will suffer him to escape, after he was once so charged, and perhaps arrested for the same, *quare* if this maketh not him an accessary, for that hee did once *agere criminaliter*, by complaint made to the officer against the felon.

I thinke in such case the Justice of peace shall do well (at least) to bind over both the one and the other to the next quarter Sessions, or to the next gaole delivery, and then to acquaint the Court with the whole matter.

But if upon huy and cry, a man doe arrest a thiefe that hath stolne another mans goods, and doe then take the goods from the felon, and so let him go, this maketh him an accessary to the felony, if not a principall felon. 27 Aff 62. Lamb. 285.

Note in all cases of an accessary after the fact, it is requisite, that the fact (to which hee is an accessary) bee a felony at the very time in which hee becommeth an accessary to it: for if A. giveth a mortall wound to B. upon the first of March, and C. knowing thereof, receiveth, &c. A. two or three dayes together, and letteth him goe; and after B. dyeth of the wound within the yeare, yet this receipt, &c. maketh C. no accessarie, because the principall fact was no felonie at the time either of the receipt, or of the letting him goe. Stamf. 287.

By the stat. 2. Ed. 6. c. 24. accessaries may be to a felonie done in another county: whereas before that statute, the common law laid no hold of such accessaries, for that those in another county, upon the triall, could not have consistance of the principall offence, &c. P. Triall 2. Stamf. 41. f. 63. b.

But now by the said statute there shall be a certificate from the *Custos Rotularum* of the county where the principall shall be attainted or convicted, &c. See *antea*, tit. Felonie. cap. 30.

Note that if an offence be made felonie by statute, although the same statute doth not expressely make mention of procurers, counsellors, abettors, receivers, consenters, and aiders, &c. yet they shall be taken as accessaries (within the compasse of the same statute), even in the same manner, as if it were felonie at the common law. Lamb. 181. Stamf. 44.

(when it shall be borne) and after the child is borne, and then the Midwife or other person, in the presence of the Mother, and by her commandement, killeth the childe, although it be done in the absence of *A.* yet hee is accessary by his counselling it before the birth, and not countermanding it. *Dyer* 186.

*Iamb* 185. A man foreknoweth of a felony intended to be done, and doth conceale it, and so suffereth it to be effected, this maketh him no accessary to the felony, except he consenteth thereto; but such concealment seemeth to be onely misprision of felony, and fineable; And yet the rule is, *Qui non prohibet, quod prohibere potest, consentit. Ideo quare.*

*Co.* 4. 44. Note that in manslaughter there can be no accessary before the fact; for manslaughter is upon a sudden falling out.

Note also that none shall have his Clergie, which maliciously commandeth, hireth, or counselleth any person to commit any petty treason, or willfull murder, or to doe any robbery, 4. & 5. P. & M. c. 4. See *Dyer* 183. 186. & *Co.* 11. 35.

Also none which is accessary before the fact, to any felonious burning of any dwelling house, or any part thereof, or barne with corne, shall have any benefit of Clergy. 1 E. 6. cap. 17. 4. & 5. P. & M. cap. 4. See *Co.* 11. *Poulterers Case.*

No horse-stealer, nor accessary thereto, either before or after (such felonie done) shall have any benefit of Clergy. 2 E. 6. cap. 33. & 31. El. 12.

After the  
fact.  
*Stamf* 41.

Accessaries after the offence, are they, who knowing that another hath committed a felonie, doe feloniously or voluntarily receive or harbour him, or relieve, assist, comfort, or aid him, whether it be before the attainder of the felon, or after his attainder. *Br. Inditement* 4.

As to comfort or relieve a felon (before hee is attainted) with money, meat, drinke, or lodging, knowing of the felony, maketh one accessary. 26. *Aff. Bt.* 47.

*Stamf.* 41.

So to lend him a horse to goe his way withall, or otherwise to bee a meanes of his escape. *Fitz. Coro.* 427.

*Br. Cor.* 103.

But to relieve him being in prison, maketh not a man accessary: Also to aid him by his good word, or suit for his deliverance, or to send a letter for his enlargement, this maketh not a man accessarie to the felonie. *Finch.*

*Iamb* 186.  
*Cramp.* 42.

A felon that goeth under baile, and stands bound to appeare for his triall, to receive, harbour, or relieve such a one, with money, or victuall, breedeth no danger of being an accessarie, because the felonie in these last cases cannot be concealed, nor the triall hindred by it.

A felon getteth his pardon, such as shall receive or relieve him after, shall not be accounted accessarie; but to receive or relieve him before his pardon obtained,

obtained, is felony. See *Plo. 476.* yet it seemeth upon this pardon, such accessory before, shall be discharged.

A felon is attainted by verdict, confession, or by utlary, to receive, harbour, or relieve such a one, by any person dwelling in the same Countie *F. cor. 377. Stamf. 96.* where the felon is attainted, it maketh such receiver or aider an accessarie *Dyer 355.* to the felonie, although such receiver, &c. did not know of the felonie; because by the attainder of the felon, hee is a felon of record, whereof every person dwelling in the same Countie is to take notice. Yet *M. Bracton* requireth a more direct knowledge in the parties to make them accessories; for albeit a Record (and especially in the pronouncing of an utlary in the Countie Court) be so notorious, that every man may easily come to know the same; yet were it an over great extremitie, that every man should (upon the perill of his owne life) take certaine knowledge thereof; which opinion of *M. Bracton*, *M. Lambert*, also holdeth to be very reasonable. *Lamb. 189.*

But a felon attainted by verdict, confession, or utlary, in one Countie, *F. cor. 377. Vi. Stam. 41.* and another doth receive or aide him in another Countie, this maketh such receiver, or aider, no accessory to the felony, unlesse hee did also know of the felony.

If a feme covert shall relieve, or receive, and keepe companie with her husband, knowing him to be a felon, she is no accessory thereby: for a woman covert cannot be accessory in felony to her husband, for she ought to relieve him, and not discover his counsell. But *quare* if this be not to be understood of accessarie after the fact; for if the wife shall procure, counsell, or conspire with her husband to commit any felony, and the husband thereupon shall execute the same, although the wife be not present thereat, yet the wife may seeme to be accessory to her husband in such case; for *M. Bracton* saith, *Vxor virum accusare non debet, nec detegere furtum suum, neque feloniam; consentire tamen non debet feloniam viri sui, neque esse coadjutrix.* *Stamf. 26.* *F. cor. 383. Stamf. 26. & 43f.*

Also if the wife receiveth, &c. another felon, she is an accessory.

A servant may be accessory to a felony committed by his master or mistress, *sc.* by relieving or aiding them, or otherwise by being a meanes of their escape, as it seemeth: for master *Bracton* saith, *Concubina & famula domus non sunt in eodem casu quo uxor, ipsa enim accusare tenentur, aut recedere a servitio, alioquin videntur consentire.* *Stamf. 27. a.*

A servant knowing his master to be a felon, continueth to doe him service, the servant is thereby an accessory, *Lect. M. Cock.*

The master knowing his servant to be a felon, still keepeth him in his service, the master is thereby an accessory, *ibid.*



may take their informations (upon oath) and if upon such examination they shall find cause, the said Justice may commit the offenders, and bind over the informer. See *antea*, in the other title of *Felony*, cap. 20.

Huy & cry.

3. E. 2. c. 9.

P Fel 38 &

Huy & cry 1

Note also (for the better prevention and apprehending of Felons) that upon all homicides, burglaries, robberies, and other felonies, and when men are put in great danger, huy and cry shall be levied, and every man shall follow the huy and cry, and whosoever doth not, and be thereof convicted, shall be attached to appeare before the Justices of Gaole delivery: Also it seemeth any Justice of peace may bind them over to appeare before the Justices of gaole deliverie, and that by force of the Commission of the first *Assig.*

3. Ed. 1. c. 9.

Yea; upon any felony committed, all men generally shall be ready (at the commandement of the Sheriffe, and at the cry of the country) to pursue and arrest felons, upon paine to be grievously fined.

Escape-

13. E. 1. c. 12

27. El. 13.

28. E. 3. c. 11

And such huy and cry, and pursuit shall be made from town to town, and from country to country; and shall be made by Horse-men and foot-men: and in case of robbery if (after notice thereof given to some dwelling neere) none of the felons be taken within forty dayes after the felony committed, then the whole hundred where the robbery was done shall answer for the robbery done, and the dammages: but yet the inhabitants of any other hundred wherein negligence, fault, or defect of pursuit and fresh suit shall happen to be, shall answer and satisfie the one moitie, and halfe of all and every such summes of money and dammages. See more here before, *viz. Huy and Cry, and Robberie.*

See Br Det.

104.

3. H. 7. c. 1.

co 7. 6. b.

And if a man be slaine in the day time, (sc. so long as it is full day-light) in a town not walled, and the murderer escape, the whole town where the murder was done shall be amerced for this escape. But if it be in a City or towne walled, then if the murder, &c. were by night, or by day, they shall be amerced for the escape. *Fit. Co.* 238. 293. 299. 302. *Stam.* 33. l. 3. *H. 7.* 1. *P. Coroners* 13.

And if a man be slaine in the day time, out of any towne, then the hundred shall be charged therewith, and for the insufficiencie of the hundred, all the county shall be charged, &c. *Stamf.* 34. f. yet see *Dyer* 210. b. that the township shall be amerced for the escape, although the murder were committed in the fields of the towne, or in a lane &c. And the Justices of peace are to enquire of such escapes, and to certifie the same into the Kings Bench. *P. Justices* 19.

P. R. 156.

Also every man is a sufficient Bailiffe and officer to apprehend him that is pursued by huy and cry; and if he be taken with the thing supposed to be stolen, though he neither be of evill name, nor a stranger, yet every man may

may commit as well such suspected person, as also such goods, to the town where they be apprehended, to answer to the King according to the Law; and the Constables of the town are to carry before some Justice of peace, as well such prisoners, as also the bringers, that the Justice may take their information against such prisoner, and may examine and commit such offender, or person so suspected.

But if a man doe levie Huy and Cry upon another without cause, both the one and the other shall be attached, and carried before a Justice of Peace to answer it, as disturbers of the peace, and be bound to their good behaviour. *sup. cap. 75.*

Note also that the Kings officer may breake open any mans house, to apprehend any felon, or any person that is suspected of felony, being in the said house: See hereof *antea, tit. Forfeiture, Cap. 28.* *9. Ed. 4. 91. Co. 5. 92.*

Also the high wayes are to be enlarged, and to be cleansed of all bushes, woods, and trees, &c. whereby such offenders may lurke or clepe. See *antea, tit. high wayes, and robbery.*

And for the better detecting and apprehending of such offenders in great townes being walled, the gates are to be shut from the sun setting, until the sun rising, and no man shall be lodged in the suburbs from nine of the clock untill day, unlesse his host will answer for him: And in all other townes watch shall be kept from the Feast of the *Ascension*, untill *Michaelmas*, from the Sun setting, untill the Sun rising; And if any stranger doe passe by them, he shall be arrested untill the morning, &c. And if they will not obey the arrest, then all men shall be ready to follow with huy and cry untill such night-walkers shall be taken; And for such arrests none shall be punished. And the Constables ought to see these watches duly set and kept: and as well the Constables of Hundreds, and of franchises, as also the petty Constables of towns, ought to make presentment to the Justices of peace at their Sessions, (and to all othes Justices there to assigned) of the defaults of watches, and of such as lodge strangers, for whom they wil not answer: and the Justices of Peace at their Sessions, shall punish such as be found in default. *P. Watch 2.* See *antea, tit. Watch*, that every Justice of peace may cause these watches to be duly kept. *13. Ed. 1. B. Watch. 5 H. 7. 2. Lamb. Off. of a Constable.*

*The forfeiture for Felony.* CAP. XII.

**T**He punishment of every person attainted of felonie is fourfold; *Co. 4. 124. Gl. 41.*  
 1. The offender shall lose his life, and be hanged between heaven and earth, as unworthy of both.

2. He shall lose his blood, as wel in regard of his ancestorie, as of his po- *Ibid.*

sterity; for his blood is corrupted, so as he hath neither ancestour, heire, nor posterity. See *Co* 11.1. b. & *Lit.* 745. & *c. Co.* l. 391. 392.

*Ibid.*

*Stat. Prer.*

*Reg.* c. 16.

3 He shall forfeit his fee simple lands (from the time of the offence, &c.) wherein the King shall have *Annum, diem, & vastum*, to the intent that the offenders wife and children shall be cast out thereof, his houses rased, his trees rooted up, his meadows plowed up, and all his land wasted and destroyed. And after the yeare, day, and wast, the lands shall goe by escheat to the chiefe Lord of the fee: (but yet the Lord may fine with the King for al: *sc.* for the yeere, day, and the wast, and so have the land presently) *quare* if the Lord may enter, it seemeth he cannot see the stat, 17. E. 2. c. 16, & *Stamf. de Prer.* 49. *Fitz. Tra.* 48. & *Br. Rescis.* 6.

4. The offender shall forfeit and lose all his goods and chattels from the time of his attainder onely.

The King shall have all the goods of felons which be condemned, and which be fugitive, wheresoever the said goods be found, *sc.* all their goods moveable and unmoveable, their corne growing, and the profits of their fee simple lands for a yeere and a day, and the issues and profits of their other lands, during their lives, and all their debts due to them by statute, recognisance, obligation, or simple contract, and money due upon accounts: and the King, or he to whom the King shall give such debt, shall have an action therefore in his own name, and yet the King shall not pay such debts, as the said felons did owe.

*Co.* 3. 3. 4.

*F. Co.* 317.

334.

10 H 6. 47.

*Dyer* 30.

*Vncore le offendere ne forfeiture sesterres pur Manslaughter, Nec in cases de Homicide per Misadventure (in fesans chose loyall) Nec pur Homicide sur Necessity, ou se Defendendo.*

By the Common law, after a felon be found guilty before the Coroner, or that it be found before the Coroner, that he did fly for the felony, there the Coroner, Sheriffe, Undersheriffe, or escheator, &c. may (for the King) seise the goods of the felon, and preise them by an Enquest, &c. before his attainder; for by such thing found before the Coroner, the goods of the felon are forfeited without further enquiry, or tryal of the felon: and yet the officer may not in such case carry the felons goods away, but (after preisment as aforesaid) must leave them in the custody of the felons neighbours where he dwelt, or in the custody of the towne where the goods were, to be answered to the King: and if he were indited of felony, yet his goods should not be removed out of his house until he were attained; but the officer was to seise and preise them, and to take suretie of the party that they should not be imbevelled; and if the party would not find suretie, then the officer was to deliver them to the neighbours, & the said goods should be kept by his neighbours all the time of his imprisonment;

and

21 Aff 96.

*Br. f. f.* 33.

43 E. 3. 14.

*Br. f. f.* 7.

7 H 4. f. ult.

*Stamf.* 192.



and the felon must have had reasonable maintenance of his goods for him and his familie, untill he were convicted and found guilty of the felony, and then the remainder was the Kings. See 25 E. 3. c. 14 P. Ind. 5.

And now by the statute made 1 R. 3. c. 3. it is ordained, that if any Sheriff, &c. or other person, doe take or seise the goods of any person arrested and imprisoned for felony, or suspicion thereof, before the same person be convicted, or attainted of such felony, or that the same goods be otherwise lawfully forfeited, he shall pay to the partie grieved the double value of the goods so taken or seised, &c. which statute seemeth to be but a confirmation of the Common Law, saith M. *Stamf. fol. 193.* save that it giveth the party grieved a more ample recompence, and more speedy remedy, than the common Law before did: so that before attainder or conviction, the goods of a felon that is in prison, ought not to be seised, nor committed to the Towne, nor taken out of the felons house or possession: for a man attainted of felony, shall forfeit such goods as hee hath at the time of the attainder, and not at the time of the felony committed: and a felon or traitor, after the felony or treason committed, and before attainder or conviction and judgement given upon him, may sell (*bona fide*) for his sustenance, &c. his goods or chattels, be they real or personal; but yet they may not disorderly sell or waste their goods. Therefore it seemeth, that the officer may still take surety that the goods be not imbevelled, and for want of sureties, may seise them, and prise or value them, and then deliver them to the Town safely to be kept untill the offender be convicted, or acquitted. See *Br. forf. 44.* where M. Brooke delivers his opinion, that this order ought to be observed of every one which committeth felony, untill he be arraigned. *Br. forf. 58. Co 8. 171. Stamf. 192.*

Nay after attainder, if they shall grant their goods or lands it shall bind all persons except the King, and Lord by escheat; but against them such grant is void. And as to their lands, relation is to be had to the day of the felony committed, by the attainder, by verdict, utlary, or otherwise: *Stam. de Prerog. 48. F. Cor. 366.*

After the conviction of a felon (if the goods were in the felons possession at the time of his conviction) the town presently stands charged therewith, and shal answer for the losse, or impairing of them, though the goods were never seised by the officer, nor delivered to the Town (except they can shew what other person hath detained those goods, and that they could never have possession of them; which exception is by stat. of 31 E. 3. 3. P. *Estreats 3.*) So that it shall be safe for the town to cease such goods (in whose hands soever they be found) presently after the conviction of any felon, and then shall it be safe for them to doe it by inventory, taken

in the presence, and by the testimony of some other honest men. Yet *quare*, for, by the opinion of *Prisor*, none may seize any goods for the King, but an officer who is accountable to the King. 49 H. 6. 1. Br. *Recess* 19.

Conviction  
on

Co. 11. 30 &

15

U. R. 189.

Dj. 275.

Co. 11. 30

Conviction in felony, is where a man (being indicted of felony) upon his arraignment submitteth himselfe to be tried by the Countrey, and then is found guilty by the verdict of twelve other Jurors, or shall confesse the offence upon his tryall, or is outlawed for the same (so, is pronounced outlawed of the felonie at the Countie Court.) Also conviction in all other offences, (by the Common law) is where the offender is indicted, or the offence presented by a Jurie, whereto the offender pleadeth, *Not guilty*, and is found guilty by the verdict of twelve other Jurors, or by a second Jury, &c.

And yet a Popish Recusant indicted therefore (at the general gaole delivery, or quarter Sessions for the peace) and proclamation there made commanding the offender to render his body to the Sheriff: of the same countie, &c. if at the next gaole delivery, or Sessions, the same offender so proclaimed shall not make apparance of record, such default recorded, shall be a sufficient conviction in Law of the said offence. 29. *El. cap. 6.* & 3. *1ac. 4. P. Recusants* 13. 42.

And sometimes (in other cases) upon proclamation made, if the partie shall not appeare and yeeld himselfe, he shall be thereby convicted or attainted of the fact, &c. see the stat. 5. H. 4. cap. 6. 11. H. 6. cap. 11. 13. H. 4. cap. 7.

And (by divers Statutes) you shall finde that an offender may be convicted (out of Court,) either upon the view and Record of the Justice of peace, or by the confession of the offender, or upon examination of witnesses before one or two Justices of Peace, and that out of the Sessions. See here *antea cap. 6.*

And sometimes, conviction may be in the Sessions, upon the certificate, or presentment of the Justices of Peace. See *tit. Ale-houses, and high-ways.*

And sometimes by confession, or examination of witnesses in Court, without any verdict taken. See *Crom. 130, 131. B. Confess. 32.*

And in some cases conviction shall bee taken for attainder: See *Co. 11. 59 60.*

The difference betweene attainder, and conviction, in case of felony, is, the person attainted hath judgement of death given upon him; the person convicted, before the judgement prayeth his Clergie, and hath it, &c. Or after verdict, confession, or outlary, the felon is laid to be convicted, till judgement be given.

And

And so a man is properly said to be indicted, when the offence is first found by the great Enquest, or other Jury of Enquiry.

2. Convicted, when the offender, having put himselfe upon his tryall, is found guilty by a second Jurie, here hee is convicted, before he hath judgement.

3. Attainted, when (after such conviction) Judgement is given against the offender, and thereby his lands are forfeited, and his blood corrupted, Ca. 1391.

*Examination of felons and evidence against them* CAP. III.

**V**hen any person shall bee brought before a Justice of peace <sup>1. & 3. P. &</sup> for murder, manslaughter, or any other felony (where <sup>M 10.</sup> with the Justice of Peace may deale) or for suspicion <sup>P. Just. 108.</sup> thereof, before the Justice shall commit or send such offender to prison, he shall take,

1. The examination of such offender,

2. The information of such as bring him, *viz.* he shall take their examination, and information of the fact and circumstances thereof: and so much thereof, as shall be materiall to prove the felony, he shall put in writing: within two dayes after the said examination.

3. Also the same Justice of peace shall binde all such by Recognisance, as doe declare any thing materiall to prove the felony, to appeare at the next generall gaole delivery (to be holden where the triall of the said felony shall be) then and there to give in evidence against such offenders: See *antea*, tit. Felony. cap. 20.

4. And then the same Justice shall make his *Mittimus*, to carry the offender to the gaole.

Or if such offender be baleable (and that there be two Justices of peace <sup>1. & 3. P. &</sup> present together, the one of them being of the *Quorum*) after such examination and information taken, and put in writing, the said Justices of peace <sup>M 13.</sup> may baile such prisoner. <sup>P. Just. 107</sup>

5. And the said Justice or Justices of peace shall certifie at the next generall gaole delivery, such examination, information, recognisance, and bailement.

And if any Justice of peace shall offend in any thing contrary to the true intent and meaning of either of these statutes of 1. & 2. and 3. P. & M. The Justices of Gaole delivery in their discretions, shall fine every such Justice of peace.



And yet for petty Larcenies, and small felonies, the offenders may be tryed at the quarter Sessions, and the examinations and informations may be certified thither, and the Informers bound thither. See hereof *antea tit. Felony cap. 20. & Stat. 3 H. 7. cap. 3. & Fit. 251 f.*

The forme of the Recognisance, see *postea tit. Recognisances. cap. 123.*

The forme of the *Mittimus*, see *postea tit. Mittimus, cap. 125.*

The forme of the Bailement, see *Postea tit. Bailements, cap. 127.*

If the offender upon his examination before the Justice of peace, shall confesse the matter, it shall not be amisse that the offender subscribes his name or marke under such confession made by him.

If the offender confesse the felonie before the Just. of P. & notwithstanding he letteth him goe, without committing or bailing of him; this seemeth to be a voluntary escape, and so felony in the Just. *Crom. 39. 44.*

*Lamb. 229.* Also if any person shall be brought before a Justice of Peace, and charged with any manner of homicide (other then that which shall be done in the orderly execution of judgement) as if it were done *se defendendo*, or by casualty (which are not felonies of death) or done by an infant, a lunaticke, or the like; yet it is the Justices part, and safest for him to commit the offender to prison, or at least to joine with some other in the bailement of him (if the cause wil suffer it) to the end the party may be discharged by a lawfull tryall. See *antea tit. Homicide.*

1 & 2 P. &  
1. M. 3.  
Evidence  
by the

The like is to be done, where any felony is committed, and one brought before the Justice of peace upon suspicion thereof, though it shall appeare to the Justice that the prisoner is not guilty thereof: For it is not fit that a man once arrested and charged with felony (or suspicion thereof) should be delivered upon any mans discretion, without further tryall. *Vide Crom. 34. & hic cap. 106. in fine.*

The Justices of peace have authority (by the words of the statute) to binde by recognisance all such as do declare any thing materiall to Prove the felony, to give evidence against the offender: And yet the wife is not to be bound to give evidence, nor to be examined against her husband, for by the Laws of God, and of this Land, she ought not to discover his counsaile or his offence, in case of theft (or other felony, as it seemeth.) See *Stamf. 26. b.* Nay, I have knowne the Judge of assise greatly to disallow, that the wife should be examined, or bound to give in any evidence against others in case of theft, wherein her husband was a party, and yet her evidence was pregnant and materiall to have proved the felony against others that were parties to the same felony, and not directly against the husband. See *antea, tit. Accessarie.*

And Sir Ed. Cooke, *l. 6. b.* saith that it hath beene resolved by the Justices,  
*termino*

*termino Pasch. 10. Jac.* that the wife cannot be produced, either against or for her husband, *quia sunt dua anima in carne una.*

And yet it was resolved by the Judges (in the case of the Lord A.) that in criminall causes the wife may be a witnesse against her husband, especially where she is the party grieved: But that in civill causes shee cannot.

7 *Caroli Regis.*

But for children, I finde in the booke of the discovery of Witches at *Lancaster Assises, Anno Dom. 1612.* that the sonne and daughter of *Elizabeth Device* a Witch, were not onely examined by the Justices of Peace against their said Mother, and the said Examinations certified and openly read upon the arraignment and triall; but the daughter also was commanded, and did give open evidence against her mother then prisoner at the Barre.

The child.  
E. 3. b. 4. 32.  
G. 2. 3. 4.

I finde further in the said booke of the discovery of Witches, that two children, the one about nine yeers of age, the other of fourteene, did upon their oaths give evidence against the prisoners upon their arraignment. See the book, *f. 4. l. a. b. K. 4. ab.* The like was done at *Cambridge*, at Lent Assises, *Anno 1619.* before Sir *Henry Montague*, Lord Chiefe Justice of the Kings Bench.

By an Infant.

Accusation or information by one that is decrepit or unable to travell, is good, and may be taken by the Justice of Peace upon oath, and certified at the next generall Gaol delivery, or Sessions of the Peace, as the case shall require.

If one be an accuser upon his own knowledge sight or hearing, and hee shall utter the same to another, that other may be an accuser. *Dyer 99.*

Accusation by an approver. See hereof *tit. Bailment cap. 114.*

And note that an offender confessing any felony (upon Indictment or otherwise) against himselfe, may also accuse others of the same felony; and such accusation may be taken by the Justice of Peace, &c.

Two informe against another in matter of felony, and they vary in their tales, (*viz.* in the day and place, when and where the Felony was committed) such information is not much to be credited. See the story of *Susanna.*

By persons discredited.

He that is examined, if part of that he speaketh be proved to be false, he is not to be credited in the residue of his information; and therefore wee shall find in *16 Ed. 4.* that a man who was produced as a witnesse in the Chancery, in his deposition he was found to swear falsly in part, and thereupon his testimony was utterly rejected.

*Crompt. 100.*

A man attainted of perjury, and the King pardons and restores him, &c. *quero* whether such a persons information shall be allowed against a prisoner; for the old saying is, Once forsworn, ever forlorn.

A man attainted of conspiracy or forgerie shall not be received to give evidence, or to be a witness. See *Crompt.* 127 b.

But if one be brought before a Justice of Peace upon suspicion of Felony, although the information against the prisoner shall be by such witnesses, yet it seemeth safest for the Justice of Peace to take their information for the King, and to binde them over to give evidence, &c. and to commit the party suspected, and upon the triall to informe the Justices of Gaole delivery concerning the credit of those witnesses.

Concerning these accusers or witnesses, I have further seen two old verses in these words;

*Conditio, sexus, aetas, discretio, fama,  
Et fortuna, fides, in testibus ista requirunt.*

And yet in case of Felony, any man (though of no worth) may be allowed for a witness or proof.

By Gods Law one witness shall not be sufficient against an offender, for any sin, trespass, or fault, *Deut.* 19. 15. And to the same purpose was the Statute 25 H. 8. c. 14. And yet now by our Law one witness is sufficient where the triall is by a Jury, for they are all sworn to try the particular matter wherewith the Defendant is charged. So also one witness is sufficient to convict an offender before the Justice of Peace in divers cases. *Vide hic cap.* 66.

When a prisoner shall be brought before the Justice of Peace for Felony, or suspicion thereof, but they that bring him, or first complained of him, will not, or cannot inform any material thing against the prisoner. See what the Justice of Peace shall or may do, *hic c.* 26. & 109.

And it seemeth fit, that the parties grieved be bound not onely to give in evidence, but also to prefer a Bill of Indictment against the prisoner: and the other persons which can informe any material thing to prove the Felony, may be bound to give in evidence only.

And for that men should be the readier and more willing to give evidence against Felons; the Statute made 21 H. 8. c. 11. hath enacted, That if any man hath any goods stolne from him, if the Felon be thereof indicted, and after in any sort attainted, or arraigned, and thereof found guilty, by reason of evidence given by the party robbed, or owner of the same goods, or by any other by his procurement (though the Thief be not hanged, nor have judgment of death) then the party robbed (or owner of the goods) shall be restored to his said goods, by a Writ of Restitution, though hee never made any fresh suit or hue and cry. Before which Statute the party robbed could have no restitution, without suing of an appeale against a Felon, and fresh suit made.

*P. Restit. 1.  
By E. 1. ray 8.  
Doct. &  
Stat. 64.*

*Stat. 165.  
166.*

Restitution

Also



Also if the Felon shall be out-lawed upon the indictment by meanes of party robbed, or owner of the goods stolne, he shall have restitution of his goods, by a Writ of Restitution, *ut supra* B.4.v.76.

And note that the Justices before whom assy such Felon shall be found guilty (or otherwise attainted by reason of evidence given by the party so robbed, or owner, or by any other by their procurement) have power to award a Writ of Restitution for the money or goods stolne, directed to the party in whose hands the same goods are, &c. 21 H.8.c.11.Br. Restit.22.

Also the Executors of the party robbed shall have restitution by force of Co.6.80. this Statute, *viz.* upon evidence given by them, or by their procurement Benl.3 El. against the Felon, whereby the Felon is attainted or found guilty.

If a Thiefe doe rob or steale goods from three men severally, and hee be indicted of the robbing or stealing from one of them, and arraigned thereupon, in this case though the other two would give evidence against the offender, yet shall not they have restitution of their goods, by the meaning of that Statute, for the Felon is not attainted of any other Felony, saving of that whereof he was indicted. But if he be indicted of all the three robberies or Felonies severally, and arraigned upon one of them, and found guilty by the evidence given by one of the parties robbed, &c. Yet shall he be after arraigned upon the other two Indictments, to the intent he also may be found guilty, by the evidence of the other two persons robbed, and that so they may have restitution of their goods stolne, according to the meaning of the said Statute. *Stamf.166. P.R.162.*

And if a man doe steale goods at divers times from severall men, and 44 Ed.3.44 he is after attainted at the suit of one of them onely, for the goods stolne from him, but is not attainted at the suit of others, by this attainder the Felon shall forfeit to the King not onely his own goods, but also the goods stoln from those other, at whose suit he was not attainted, though the Felon had no property, but onely a profession of those goods; and the property of the goods which remayneth in the right owner in this case is forfeited (by the owner) to the King, for default of the owners pursuing the Felon.

Also if there be divers of the Thieves, and but one of the principals attainted (as before) yet it seemeth the party robbed shall have restitution.

But in these and the like cases of restitution, if the Felon hath sold the goods in a Fair or Market overt, and after be attainted of the Felony (upon evidence given by the party robbed) here the owner shall not have restitution: For by alienation in Faire or Market overt, the property of goods stoln are altered, 12 H.8.10.6. Yet if he that bought the goods in Market were privy to the Felony, such sale shall not alter the property, *quia participes criminis*? See 33 H.6.7. Co.3.78. *Vide antea tit. Horses.*

A man shall have restitution of money stolne, &c. though it cannot be known. *Br. Restit* 22.

But if a man hath a horse or other goods stoln from him, and knoweth not by whom, if the felon waiveth the goods, flyeth, and escapeth, and the Kings Officers, or the Lord of the Mannor, &c. seiseth them, the party robbed shall have no restitution, for that he cannot indict and attain the felon: And yet if the felon had not the goods in his possession, and with him at the time when hee fled (but had formerly left them elsewhere, *sc.* in the thieves own house or in any other mans house, or in the custody of any other, or had hid them) then are they no waived goods, nor forfeit, but that the owner may take them again wheresoever he findeth them, without any restitution awarded, *Co.* 5. 109.

Also in the aforesaid book of Discovery of Witches, I observe one other thing, *viz.*

That Examinations taken by Justices of Peace in one County, may be (by them) certified into another County, and there read and given in evidence against the prisoner. *T.* 2. 3. And in such cases the examinations would be taken upon oath.

Examina-  
tion certi-  
fied.  
*Cramp.* 193.

The offender himself shall not be examined upon oath, for by the Common Law, *Nullus tenetur seipsum prodere*: Neither was a mans fault to be wrung out of himself (no not by examination onely) but to be proved by others untill the Statute of 2 & 3 P. & M. cap. 10. gave authority to the Justices of Peace to examine the felon himself.

Upon  
Oath.

But it seemeth convenient, in cases of felony especially, that the information (of the bringers and others) which the Justices of Peace do take against the prisoner, be upon oath: otherwise upon the triall of the prisoner, such Information or Examination, taken by the Justice of Peace, shall not be read or delivered to the Jury, nor given in evidence against the prisoner upon his triall. And so was the direction of Sir *Edward Coke*, late Lord Chief Justice (5 *Iacobi*, at *Cambridge Sommer Assises*) upon the triall of a felon: for (said he) in case of a trespassse to the value of two pence, no evidence shall be given to the Jury, but upon oath; much lesse where the life of a man is in question. See *Lamb.* p. 210. that hee hath heard the opinions of other Justices of Assise delivered accordingly.

*Cramp.* 194.

Also if the Informers be examined upon oath, then though it happen they should die before the prisoner have his triall; or if they shall not appeare upon the Recognisance, and give evidence against the prisoner (being laboured perhaps to absent themselves,) yet may their information be given in evidence, as a matter of good credit.

Also it is found by experience, that without oath many Informers will  
speake

Speak coldly against a felon before the face of the Justice of Peace; yea, and will also speak very sparingly and coldly, upon their evidence given before the Judges of Assise; as I have observed in some, had they not been urged with their former information taken upon oath. For the labouring (by the offender and his friends) to such as are to inform and give evidence (both before the matter commeth before the Justice of Peace, and after) is now grown over common and usuall.

Also M. Brook (*tit. examination 32.*) is of opinion, that every examination ought to be upon oath: And so also is the practice of the Justices in the higher Courts at *Westminster*, in all their Examinations of Summoners, Viewers, Sheriffs, Clerks, and other Officers, &c. *Lamb. 209.*

And here let me admonish all such as are to inform or beare witness against a prisoner, or any offender, before a Justice of peace, or other Magistrate, That they be well advised what they testifie upon their oaths, knowing that in such cases, if either they should not speak the truth, or should conceal any part of the truth, they should offend against God, the Magistrate, the innocent, the Common-wealth, and their own souls: *sc.* against

God, in despising of him, and belying the truth.

Magistrate, in deceiving of him, and causing him to do injustice;

Innocent, in spoiling him of his name, goods, or life.

Common-wealth, *sc.* if the party be nocent or guilty, and hee clears him by false witness.

His own soule, for it is perjurie in him, at least, in the presence of God and good men.

*Whether Information, Evidence, or proof of Witnesses shall be taken against the King. CAP. II.*

**I**T seemeth just and right, that the Justices of Peace who take information against a felon, or person suspected of felony, should take and certify as well such information, proof, and evidence, as goeth to the acquittal or cleering of the prisoner, as such as make for the King, and against the prisoner: for such information, evidence, or proof taken, and the certifying thereof by the Justice of Peace, is onely to informe the King and his Justices of Gaol delivery, &c. of the truth of the matter.

And Sir *Ed. Coke* (at Lent Assises at *Bury 5 Jacobi*) advised a Coroner that he ought to have done accordingly, (as I have heard.)

But *quare* if the Justices of Peace, or Coroner, may take upon oath



such information, evidence, or proof as maketh against the King, it seemeth no.

*From. 8. q. 6.* Upon triall of Felons before the Justices of Gaole delivery, the said Justices will often heare witnesses and evidence which goeth to the clearing and acquittal of the prisoner, yet they will not take it upon oath; but doe leave such testimony and evidence to the Jury, to give credit, or to thinke thereof, as they shall see and finde cause.

*Popham*, Chief Justice (at *Cambridge Assises tempore Eliz.*) committed one to prison, who upon the triall of a Felon, called out, That he could give evidence for the Queen, and when he was sworn, he gave evidence to acquit the offender.

*By Armony.* But by the Statute of 31 *El. cap. 4.* it was enacted, that such persons as shall be impeached for any offence made Felony by that Statute (being against imbeasiling of armour, &c.) shall be admitted to make any lawfull proove that they can, by witnesse or otherwise, for their discharge and defence.

*Stamf. 141. b.* In 7 H. 4 we shall finde that one of the Sergeants, as *amicus Curie*, and to inform the Court (that they should not erre) did shew his opinion to the benefit of a prisoner, upon the insufficiency of the Indictment: the like is to be seen in *Brooks Case*, 28 *Eliz.* in *Banco Regis. Co. 4. 39.*

*Co. 4. 39.*

### *Causes of suspicion. CAP. II 3.*

**N**OW upon the examination of Felons, and other like offenders, these circumstances following are to be considered:

1 His name, *sc.* if he be called by divers names.

His parents, if they were wicked, and given to the same kinde of fault.

His ability of body, *sc.* if strong and swift or weak, or sickly, not likely to do the act.

His nature, if civill or hasty, witty and subtile, a quarreller, pilferer, or bloody-minded, &c.

His means, if he hath whereon to live, or not.

2 *Quality.* His trade; for if a man liveth idly or vagrant (*nullam exercens artem. nec laborem*) it is a good cause to arrest him upon suspicion, if there have been any Felony committed. 7 *E. 4. 20. Br. fx. imp. 22.*

His company, if Ruffians, suspected persons, or his being in company with any the offenders. 7 *E. 4. 20.*

His

His course of life, *sc.* if a common Alehouse-haunter, or riotous in diet, play, or apparell.

Whether he be of evill fame or report.

Whether he hath committed the like offence before, or if he hath had a pardon, or been acquitted for Felony before,  
*Nam qui semel est malus, semper praesumitur esse malus, in eodem genere mali.*

So if he hath formerly abjured the Realme, or beene outlawed for Felony, although he hath his pardon.

If he hath any blood about him, on his apparell, or that his weapon be bloody.

If any of the goods stolln be in his possession.

If any of the apparell of the party murdered be in his possession.

The change of his countenance, his blushing, looking downwards, silence, trembling:

His answers doubtfull or repugnant.

3 Marks, or  
Signes.

If he offered agreement or composition.

If he hath laboured his neighbours not to speak thereof.

The measure of his Foot, or Horse Foot.

The bleeding of the dead body in his presence.

If, being charged with the Felony, or called Thief, he saith nothing. *P. Cor. 24.*

If he fled, *fatetur facinus, qui iudicium fugit. Co. II. 60.*

If he hides himself, or takes Sanctuary.

If he lies lurking in a place where he hath nothing to doe.

If he were the first that found the party murdered.

Place, *sc.* if convenient for such act, as in a house, in a Wood, Dale, &c.

Time, the yeer, day, houre, early or late.

4 The fact.

Where the offender was at the time of the fact, and where the day or night before his businesse and company there, and witnesse to prove all these

Manner, if willingly, by chance, or necessity.

If former malice.

5 The cause.

If to his benefit, or what hope of gain.

If for the eschewing of any hurt or danger.

*Agens*, if Principall or Accessary, Enfant, Lunatick, &c.

6 The persons.

*Patiens*, if against the King, Common-wealth, Magistrate, Master, &c.

A felon brought before a Justice of Peace accuseth others, it is sufficient cause for the justice to grant out his Warrant for the arrest.

F. Cor. 212.

A man going to execution accuseth another of felony, it is sufficient cause to arrest him.

Fama.

Br faux im-  
pris 16.

*Communis vox & fama*, that he did the offence, is sufficient cause of suspicion: *sc.* where such a felony is done, otherwise not.

But yet for the better conceiving what may breed or give just cause of suspicion, mark some of *M. Bractons Rules*.

Stamf 97.

*Oritur suspitio ex fama; Fama vero que suspicionem inducit, oriri debet apud bonos & graves, (non quidem malevolos & maledicos, sed providas & fide dignas personas) idque non semel, sed sepius: vana autem voces populi non sunt audienda.*

And therefore where the common Proverb is, *Vox populi, est vox Dei*, it should be, *Vox populi Dei est vox Dei*.

Stamf 29.

*Si furtum in manu alicujus invenitur, vel sub potestate alicujus, tunc ille in cujus domo vel potestate res furtiva inventa fuerit, tenebitur, (nisi Warrantum invenerit, qui eum inde defendere possit) for as another saith, Cum adsum testimonia rerum, quid opus est verbis.*

Stamf. 119.

*Si quis noctu cubaverit, in domo solus cum aliquo qui interfectus sit, vel si duo aut plures ibi fuere, & hutesum non levare, nec plagam à latronibus vel intersectoribus in defensione facienda accipere, nec ostendunt quis de se vel de aliis hominem interfecerit, his casibus mortem dedicere non possunt.*

Ibid.

*Si quis in domum suam notum vel ignotum acceperit qui vivus ingredi visus est, vero postea nunquam nisi mortuus, dominus domus si tunc domus sit, vel alii de familia qui tunc interfuerunt, penam capitalem subibunt, nisi forte per patriam fuerint liberati.*

Stamf 97 &

179.

Co. l. 6.

*Sunt etiam quedam presumptiones ita violenta, ut probationem non admittunt in contrarium, ut si quis cum cuspello cruentato captus sit super mortuum, vel fugiendo à mortuo, vel mortem confitetur; quibus casibus non admittitur mortem dedicere, nec alia opus est probatione.*

Sir Ed. Coke, l. 6. maketh three sorts of presumptions, *viz.*

1. *Violenta*, (as in this last former case) which he saith is *plena probatio*.
2. *Probabilis*, which (saith he) moveth little.
3. *Presumptio levis, seu temeraria*, which moveth not at all.

And yet in cases of felony, &c. the confession of the offender, upon his examination before the Justice of Peace, shall be no conviction of the offender, except he shall after \* confesse the same again upon his triall or arraignment, or be found guilty by verdict of twelve men, &c.

\* Co. II.

30 & vide.

To the like purpose also is the rule of the Civil Law, *Si quis in Iudicio sponte de seipso confiteatur, & postea maneat in confessione, satis est.* If any man  
in



in judgement do confesse of himself, of his own accord, and after doth persever in his confession, it is enough, and such confession shall be taken for an evidence of the crime.

But yet at Lent-assises at *Cambridge*, Anno quarto Caroli Regis before Sir *Fr. Harvey*, upon the arraignment of a prisoner for felony, his Examination, which was taken before the Justice of Peace, wherein he had confessed the felony, was onely given in evidence, no other evidence then coming in upon his triall; And the prisoner upon that his own confession before the Just. of Peace, was found guilty by the Jury of life and death, & had judgment, &c.

Also in cases of secret murders, and in cases of poysoning, witchcraft, and the like secret offences, where open and evident proofs are seldome to be had, there (it seemeth) half proofs or probable presumptions are to be allowed, and are good causes of suspicion, and are sufficient for the Justice of Peace to commit the party so suspected.

But note (by the Common Law) that in an action of false imprisonment, <sup>8 Ed. 4. 4.</sup> brought against the Constable (or other person that shall arrest another upon suspicion of felony) it is no plea for them to say, that the Plaintiff was suspected of Felony: but hee must alledge, That there was such a Felony committed, and that the Plaintiff was suspected for the same: for suspicion onely, without a Felony committed, is no cause to arrest another. Yet see the Statute of <sup>5 H 7. 4.</sup> *5 E. 3. c. 14.* that if any man have any evill suspicion of any persons for Felony, &c. be it by day or night, they shall be incontinently arrested by the Constables of the Towns, &c. and kept in prison till they be delivered by the Justices, &c. <sup>Br. fx. imp. 4</sup> *& hic c. 118.* <sup>16.</sup>

Also the defendant must alledge some speciall matter (in fact) to prove <sup>17 E. 4. 5.</sup> that he who was arrested was suspected of Felony, (as to say, that the party <sup>21 H 7. 19.</sup> arrested is a man of evill fame, or a vagrant person, &c.) otherwise one man may arrest any other, yea, every man in the Towne may be arrested, when any Felony is committed.

*Mes quel est sufficient cause de suspicion, & quel nemy, serra trie per les Justices. fi. 127.*

Also the defendant must plead, that hee himselfe had a suspicion of the Plaintiff: for if the Constable (or other person that shall arrest one that is suspected) doth not suspect him himself; it seemeth hee may not arrest him, upon his own authority; and yet by the opinion of *Keble*, *Vavasor*, and *Townsend*, as well the Constable, as others in his aid, may arrest one that is suspected of Felony, upon the suspicion and complaint (made to the Constable) of the party robbed, <sup>7 E. 4. 20.</sup> *2 H. 7. 15. 16.* <sup>Br. Fx. imp.</sup> *Br. Faux Imprif. 14.* yet *alii e contra, ibid. sc.* that the suspicion can extend to none other, but onely to him that hath the suspicion, and *Br. 14. H. 8. 16. A.* accordeth: *tamen quare,* <sup>8, 14, 16, 17.</sup> for c

for if Felons may not be arrested or stayed, but onely by those that shall suspect them, and that others may not aid and assist the party that shall suspect another to have robbed him, many Felons shall escape, and Felons shall often go unpunished. See *Pl. 46. a. & Finch 127.*

But now by the Statute 7 Jac. 5. the Constable, &c. in the former cases, may plead the generall issue (Not guilty) and give the said speciall matters in evidence.

Also, if the Constable, or other person, shall arrest another upon suspicion of Felony, by vertue of a Warrant from a Justice of Peace, such Warrant shall excuse him, it being given in evidence, &c. *Vi. postea tit. Warrants.*

*Bailment and Mainprise. CAP. 114.*

**B**Ailment, Mainprise, or Replevin, is the saving or delivery of a man out of prison, before that he hath satisfied the Law; *sc.* by finding Sureties to appeare at a certain day, and to answer, and be justified by the Law.

And to this purpose these three terms (Bailment, Mainprise, and Replevin) be indifferently used in our Statutes and Books.

He that is bailed, is taken or kept out of prison, and delivered (as it were) into the hands of his Sureties, who are reputed his Guardians, and who may keep him with them, and may imprison him, by some opinions: See *Stamf 65. P. Mainp. 18. 22 H. 6. Br. Surety 8. & Mainp. 89.*

If the Mainpernors or Sureties, do at any time, or in any case, doubt that their prisoner, or the party by them bailed, will flee, they may take him, and bring him before any Justice of Peace, and upon their prayer, the said Justice of Peace may and ought to discharge such Sureties, and to commit the party to prison, except he shall finde new Sureties, &c. *Cramp 257.*

So if a prisoner be bailed by insufficient persons, the Justice of Peace (*ex officio*) may cause him to finde better Sureties, and may commit him till hee shall so doe; for the Statute of *Westm. 1. c. 15.* requireth that such as be bailed, be let out by sufficient Surety. *P. Mainp. 2. Vide antea tit. Surety for the Peace, s. 70.*

If the prisoner cannot finde sufficient Sureties, the Justice of Peace is not bound (nay ought not, knowing their insufficiency) to let the prisoner to bail. See *Co. 10. 101.*

And therefore, although the number of such Sureties, their sufficiency, and the sum wherein they shall be bound, resteth (in some sort) in the discretion of the Justice, yet it is safe for them to take two Sureties (at the least) and those to be Subsidy men, and to be bound in good summes, especially if

if the prisoner be in for felonie, or suspicion thereof: for the moe, and the more able that the sureties are, the rather they will cause him that is bailed to appeare. And againe, for want of taking sufficient baile, the Justices of peace are fineable: And at *Cambridge Assises An. Dom. 1613.* Judge *Worberton* threatned to have set 40*li.* fine upon two Justices of peace, who had bailed a prisoner ( that was committed for suspicion of felony, and appeared not ) for that the sureties were not subsidie men.

And it seemeth that the Justices of peace may examine upon their oathes, the sureties, concerning their sufficiencie, or whether they be subsidie men. The Justices of the Common place (7*H.6.25.*) did examine the ability of the sureties upon their oaths &c. and that which the higher Courts do, may be a good rule for others. *Vide 2.H.7.fol.1. & hic cap.69.*

Now bailment by the Justices of peace ( in case of felony, or for any o- *Stamf.77.*  
ther matter ) is alwayes upon a certain summe of mony ( as upon 40*li.* &c. ) *11 H.7.20.*  
the which summe the sureties, &c. shall forfeit to the King, if the prisoner appeareth not at his day.

Also, the bailment in felony is, *Ad standum rectum de latrocinio predicto secundum legem, &c.* Which seemeth to imply, that they which have taken him to baile, shall not onely cause him to appeare, but also to answer to the felonie. *Stamf.77.d.*

And in this businesse of bailment ( being a matter of much weight ) it be-  
hoveth the Justices of peace to be very circumspect, as well for feare of  
wrong, by denying it to him that is baileable; as also for feare of danger to  
the service it selfe, by yeelding it where it is not grantable; and for feare of  
danger to themselves in both cases.

For whosoever doe detaine prisoners who are baileable, after they have  
offered sufficient sureties, shall be grievously amerced to the King; and hee  
that doth take any reward for the deliverance of such, shall be amerced to  
the King, and pay double to the prisoner. *1.E.1.15. P.Mainp. 6. Sec 23.H.6. 6.10 P.Shr.8.14. 25.E.3.f.39. Stamf.33.77*

So on the other side, if one who by the law is not baileable, shall be let  
to mainprise, this shall be adjudged a negligent escape in him or them that  
doe let him to mainprise; and for such an escape or offence, they shall be  
fined; and punished as followeth.

If the Sheriffe, Constable, or any Bailiffe of fee, who hath the keeping of  
prisoners, shall baile any person which is not baileable, and be therof attain-  
ted, they shall lose their fee and office for ever: and if the under-Sheriffe, con-  
stable, or bailiffe of such as have fee for keeping of prisoners do it contrary  
to their masters will; or any other Bailiffe being not of fee; they shall have 3.  
yeares imprisonment, and make fine at the kings pleasure. *Doct. & Stu. 135.*

Noie, that the Sheriffes, and other officers which doe let to baile any  
persons



persons forbidden (by the statute of *West. 1. made 3. E. 1. cap. 15.*) to be bailed, shall be punished by the Justices of Gaole delivery according to the forme of the same statute; or else by the said Justices they may be put to their fine, as for an escape punishable at the Common law. *25. E. 3. 39.*

*Quere*, if it be not felony for them to baile felons, or persons suspect for felony, for that these Officers have no authoritie at this day to baile such prisoners, & *vide hic cap. 106.*

Now what persons be forbidden to be bailed by the said statute of *West. 1.* see *postea sub hoc tit.*

Note also, that the Sheriffe or Constable might at the Common law have bailed a suspect of felony (because they were conservators of the peace) but now that power seemeth to be transferred to the Justices of peace onely. See the stat. *1. R. 3. c. 3. & 3. H. 7. 3.*

By the Justices.

*1 & 2. P. &*

*M. cap. 13.*

*P. Just. 108.*

*P. Mainp. 4.*

If any Justices of peace doe let to baile or mainprise any person, who (for any offence by him committed) is declared not to be baileable, or forbidden to be bailed by the aforesaid stat. of *3. Ed. 1.* the said Justices of peace so offending shall pay such fines, as shalbe assessed by the Justices of gaole delivery where the offence shall be committed. *Fitz. 251. i. See hic cap. 106. in fine.*

*1 & 2. P. &*

*M.*

But the Justices of peace and Coroners, within London and Middlesex, and in all other Cities, Boroughs, and townes corporate, have authoritie to let to baile felons, and prisoners, as they have formerly accustomed. *P. Just. 107.*

See Co 10.  
100 b.

If the Sheriffe, Justice of Peace, or other officer, shall baile one that is not baileable, such bailement being against Law, *quere* if the Recognisance, or bond taken upon such bailement (for the appearance of the prisoner) be not void. See the opinion of *Moile*, *37. H. 6. 1.* and of the Court there, that such a bond taken by the Sheriffe is void.

The manner.

*1 & 2. P. &*

*M. cap. 13.*

*P. Just. 107.*

Now to shew further the authoritie of the Justices of P. in this behalfe. No person arrested for manslaughter, or felony, or suspicion thereof (being baileable by the Law) shall be let to baile or mainprise, by any Justice of peace but in open Sessions, or by two Justices of peace at the least, whereof one to be of the *quorum*, and the same Justices to be present together, at the time of the said bailement.

*Ibid.*

And this bailement the said Justices shall certifie in writing (subscribed with their hands) at the next generall gaole delivery, &c. *Vide antea tit. Examination of Felons, cap. III.*

*Ibid.*

Also before the bailement of such prisoner, the same Justices, or one of them, shall take the examination of the prisoner, and information of them that bring him, of the fact and circumstances thereof, and so much thereof

as shall be materiall to prove the felony, shall put in writing, before they make the bailment: which examination, information, and bailment, they shall certifie at the next generall gaole delivery, *ut supra*.

But if any Just. of P. hath taken the examination of a felon, and information against him, and after hath sent him to the gaole, now upon bailment of him by other Just. they need not to take any new examination of the prisoner, or information against him; but under their recognis. (or together therewith) to certifie by what Just. of P. the felon was committed, to the end that at his hands those examinations and informations may be required, if he have not certified them.

By the opinion of M. *Crompt.* a prisoner (taken for felony) before his commitment, ought to be examined, and bailed by two Justices of peace being together (as before:) but after that the prisoner is examined, and once committed, then he may be bailed by any one Justice of peace: *quare* thereof. *Crompt. 150.*

The Justices of Peace which shall send any prisoner to the gaole, ought to shew in their *Mittimus* the cause of the commitment, to the end it may appeare whether such prisoner be baileable or no. *Mittimus the forme.*

And if the Justices of peace shall commit one to the gaole, with these words in the *Mittimus*, *sc.* without baile or mainprise (shewing a certaine cause in their *Mittimus*,) yet if such a prisoner be baileable by law, other Justices of peace may baile him; (yet *quare*, seeing their authority is equal) but if the prisoner were committed without baile or mainprise, and without shewing cause in the *Mittimus* then other Justices of peace cannot (or at least shall not doe well to) baile him, without making the other Justice which committed him, privie thereto; for he might be committed for such cause, as that he is not baileable (as for treason, &c.) *Crompt. 153.*

I have seen a Report of a case, *Term. Trin. 37, El.* That upon an assembly of all the Iudges and Barons at Sergeants Inne, it was resolved and agreed by them to be put in ure in their Circuits, that if a Justice of peace should commit a man to the Gaole for felony, for which by the Law he is not baileable but by his *Mittimus* he commits him generally, not shewing any cause, if other Justices of the Peace shall baile him, not knowing of the matter, &c. they shall be fined for the same; for they at their perills ought to informe themselves of the truth of the matter, before they baile him. *See pag. seq.*

Note, where a man is baileable, yet when he commeth before the Just. he must offer surety to the Justices, otherwise they may commit him to prison *Br. Peace 7.* *14 H. 7 c. 4.*

Next it followeth that I shew what persons be baileable and what not. It appeareth by the statute of *Westm. 1. cap. 15.* that in these four cases persons not baileable.

*P. Mainp. 11.  
Stamf. 72.*

following, a man was not baileable at the common law. *Br. Mainp. 47, F.N. B. 66, c.*

1. No person taken for the death of a man, *sc.* for murder, or any other homicide, was baileable by the common law.

*Br. mainp. 11.*

And yet the Justices of the Kings Bench doe use to baile them. yea, although it be for murder. *Br. Mainp. 60. 63. 78. 47.* See the stat. 3. *H. 7. c. 1.*

*03. 78*

*F. Cor. 361.*

*P. just. 107.*

*Lamb. 336.*

Also the stat. 1. & 2. *P. & M. cap. 23.* seemeth to admit that for manslaughter, and all other homicides (except murder only) the slayer may be bailed by the Justices of peace; which also I take to be the common practice at this day. But let the Justices of peace be sparing and well advised herein, *viz.* that the offence be but manslaughter, and not murder.

Also it seemeth the Justices of peace cannot baile him that hath committed manslaughter, if either he hath confessed the offence upon his exa-

*P. Mainp. 1.* mination (*vide postea tit. Bailement.*)

Or that he be taken with the manner:

Or that it be apparently knowne that hee killed the other. *Vide pag. sequent.*

He that hath dangerously hurt another, may goe under baile, &c. See before. 13. *H. 7. cap. 1.*

2 Secondly, no person taken by the Kings commandement, was baileable by the common law; but this must be intended of the Kings commandement by his owne mouth, or by his privie Counsell, which are incorporate to him. See *Stamf. 72. c. Br. Mainp. 37. 17.*

*Stamf. 73.*

3 Thirdly, no person taken by the commandement of the Kings Justices was baileable by the common law: But this must be intended of their absolute commandement; as if the Justice commands one to prison, without shewing cause why he doth so command, or for misdemeanor done in his presence, or for some other cause which lyeth in the discretion of the Justice (more than in his ordinary power, &c.) and that such imprisonment be for a punishment.

*See pa. preced.*

And therefore if the Lord Chancellor of England, or Lord Keeper of the the great Seale (who have power to commit one to prison, wheresoever they are in England) shall command or commit one to prison, by such their absolute authoritie such person shall not be bailed.

And so if the Justices of the Kings Bench shall command one to prison.

And so if the Justices of the Court of Common Pleas sitting in their Court.

Or Justices of Assise in their places; if these shall commit any to prison, they are not baileable.

But where any Justice or Justices shall commit one, rather to be safely kept,



kept, than for a punishment; such commitment may be said to be by an ordinary comandement; and the party so committed is baileable. *Termes de ley.*

4 Fourthly, trespassers in the forrest, were not baileable by the common law: but that was remedied by the stat. 1. E. 3. v. 8. & 7. R. 2. cap. 4. F. N. B. 67. c.

But now for that by the statute 1. & 2. P. & M. 13. it is provided, that By statute. no Justice, or Justices of peace, shall let to baile any person contrary to the P. ju. 107. afore said statute of *West. 1.* (made 3. E. 1.) cap. 15. And so the said statute of *West. 1.* is now as a line, whereby the Justices of peace are to guide themselves in such cases of Bailment, I will shew here what persons are baileable by that statute of *West. 1.* and what not.

By this statute of *West. 1.* no prisoner shall be let to baile, which is taken 3. Ed. 1. 15. in any of these xiii. cases following: P. Mainp. 1. F. N. B. c. 66

1 Such as have abjured the Realme shall not be bailed.

2 Nor any approver or appellor, for that he confesseth the felony, and himselfe guilty, before he can burden or accuse another, as coadjutor, or helper with him in doing the same. Stat. 144 b. Lamb 337.

3 Nor he which is appealed by an approver, so long as the approver doth live, except he be of good name, or that the approver doth waive his appeale: see *Stamf. 74.* Or that the approver be vanquished, 25. E. 3. 42. Fitz. 150. d. Br. Main. 3.

4 Nor he which is taken for burning of a house, &c. feloniously. *Vide antea, Felony by the Common law, cap. 105.*

5 Nor any excommunicate person, taken (at the Bishops request, &c. upon his certificate into the Chancery) by the writ of *Excom. capiendo.* F. N. B. 66. c.

And yet when the party is so taken, if he will conforme himselfe to the Lawes of Holy Church, and give surety for his obedience, he shall have a writ *de cautione admittenda*, directed to the Bishop; and if the Bishop will not, then hee shall have a writ to the Sheriffe to deliver him. See *Fitz. 63. c. d.*

6 Nor any felon taken with the manner.

7 Nor a theefe openly defamed and knowne.

8 Nor he which is outlawed in case of felonie; and yet in some cases, such as be outlawed may be bailed by the court, &c. See *Stat. 74.*

9 Nor he which hath broken the Kings prison. *Vide antea tit. Felonie, by Statute, cap. 106.*

10 Nor he which is taken for treason, touching the King himselfe.

11 Nor he which is taken for falsifying the Kings money.

12 Nor he which counterfeiteth the Kings seale. Br. Mainp. 59.

In all these former cases, if the cause for which the party is imprisoned be treason or felony, or otherwise touching life, or member, then shall he not be baileable; otherwise it seemeth he may be bailed.

13 Nor he which is taken for a manifest offence, as if a man be indited and imprisoned for a Ryot, or other great offence, before Justices, by force of the Kings commission of Oyer and Terminer, this (and the like) are the manifest offences whereof the statute speaketh. See *Fitz.* 250.f.

*West.* 1. 15. But by the same statute of *West.* 1. such persons are baileable, which be taken in any of these six cases following.

Persons  
baileable.

First, he that is taken (or indited) for light suspicion of felony, is baileable: see *Lamb.* 335. *F.N.B.* 249.g. 250.c. 251.f.

1. Persons  
suspect.  
*Stamf.* 74.c.

He that is taken upon suspicion of burglary, robbery, or theft, if he be not of evill fame, nor that there be any strong presumption against him, it seemeth he is baileable.

15.E. 4. 5.

*Br. Main.* 75.

A man had stolne certain hogs, and (for that he was of evill fame) he was committed without baile; yet if he could have brought prooffe or witnesse that he bought them, he should have been bailed.

*Cromp.* 154.

A man is arrested for suspicion of felony, and brought before the Justice, if it shall appeare that there is no such felony committed, the party may be set at liberty without baile; but if there be a felony committed, though the prisoner can cleare himselfe, yet the Justice must either commit him or baile him. *Vide antea tit. Felony by statute.*

2. Pety Lar-  
ceny.

*P. Mainp.* 2.

*Fitz.* 250.6.

3. Persons  
intended  
by enquest  
of office.

*P. Mainp.* 2.

*Stamf.* 74.

*Fitz.* 247. &

250.6.

*Br. Main.* 197.

Secondly, he that is taken (or inditd) for pety Larceny (that amounteth not to 12.d. or above the value of 12.d.) if he were not guilty of some larceny before, he is baileable.

Thirdly, such as be indited of larceny by enquest of office, before the Sheriffe, or before Coroners, or Bailiffes, &c. or in any base Court, they shall be set at liberty upon sufficient surety.

And yet they shall not be bailed, if they be not also of good fame; but if they be of good fame they are to be bailed, although they be indited as aforesaid (before Sheriffs, Bailiffs, Coroners, or before any other such officers, by their office; or in any base Court:) yet *quare* if the Justices of peace out of their Sessions may safely baile such persons; for being indited, they are more than vehemently suspected, &c. *Vide pa. sequente.*

One that was indited before the Coroner, that hee had killed another *Sc. defendendo*, was (by the Justices of gaole delivery) bailed till the next Assises, to purchase his pardon. 26. *El. Cromp.* 153. See *antea. tit. Misadventure.*

One that was indited before the Sheriffe for stealing of a horse (which seemeth to have beene in his torne) may be bailed by the Sheriffe: (if hee be

bee of good fame) by the Writ *de Manucapione*. F. N. B. 249. g.

Also one that was indited of burglary, as principall, pleaded not guiltie, and was after bailed. 29. lib. Aff. Fitz. Mainp. 9. See infra.

Another that was indited of robbery, was bailed. 41. lib. Aff. 30. Br. Mainp. 61.

If any murderer being indited, and after arraigned at the Kings suit, shall be thereof acquitted within the yeare and day, the Justices before whom he is acquitted, shall not suffer him to goe at large, but either shall remit him againe to prison, or else may baile him (at their discretion) till that the yeare and day be passed, to the end that the wife, or next heire to the party murdered, may have their appeale of the same murder, within the yeare and day after the same murder done, &c. 3. H. 7. cap. 1 Fitz. 251. g.

But such as are attainted, or convicted of felony, are not baileable; for although it doth not appeare by any words of the said Statute of *West. 1.* that it doth prohibite the bailement of such as bee attainted by verdict, yet it is to be intended, that the statute doth as well prohibite the bailement of those attainted by verdict, as it doth of them who bee attainted by Outlawry; and therefore if a prisoner after he hath pleaded, Not guilty; be attainted by verdict, that hee killed a man *se defendendo*, or by misfortune, yet he shall not be bailed by the Justice of peace: *Tamen vide antea tit. Felonies by Casualty. hic cap. 96. & Stamf. 15. c. Fitz. N. Br. 246. c. que ilz serra baile per les Justices (de gaole delivery) devant queux il seratoye; &c.*

And if a man that is arraigned of Homicide doth plead, Not guilty, and is found guiltie, and doth pray his Clergy, and is reprived without judgement, he is not baileable; for being convicted of the felony; he is more now than vehemently suspected, and the intendment of Law in cases of bailement, is, that it resteth indifferent whether he be guilty or not, untill triall, &c. *Dyer 179. See Br. Mainp 94.*

The same reason seemeth to hold, if a man be found guilty of homicide, before the Coroner: yet see 22. Aff. p 94. Br. Cor. 90. that such are baileable as are found (before the Coroner) but suspicious.

Also a man convicted of felony, remaineth in prison, and after obtaineth the Kings pardon, the Justice of gaole delivery may baile him till the next gaole delivery, that he may then come with his pardon and plead it, 2. E. 6. Br. Mainp. 94.

4 Those that be charged with the receit of theeves, or felons, or of commandement, or force, or of aide (in felony done) be baileable.

And it seemeth that abettors, consenters, and procurers, and all other accessaries to felonies, are within the equity of this statute, and are baileable 39. & 58.

4. Accessaries

P. Mainp. 3.

Stamf. 71.

Stamf. 71. c.

Fitz. 250. c.

Br. Mainp. 12



baileable: yea, accessaries. (as well in case of the death of a man, although it be murder, as in case of other felonies.) are baileable (if they be of good fame) untill the principall be convict or attaint; but after the principall is attainted, the accessary shall not be bailed, but kept in prison: and yet if (after the attainder of the principall) the accessarie shall appeare, and plead not guilty, or other plea, it seemeth it shall be bailed; The reason is, for that when the accessary shall make default, then is it as a *fugam fecit*, and a great cause of suspicion of the thing; but when he appeareth, by that the suspicion is now taken away, and so he is baileable. See more in *Br. Mainp.* 6. 9. 22. 54. 64. & 97.

*Stamf.* 71. *F. Cor.* 200. If a man be accessary to two, and the one principall is attainted, though the other be not, yet the accessary shall not be bailed.

In felony, if the principall die in prison, or be attainted of another felony, the accessary shall be bailed. *F. Cor.* 378. *Br. Mainp.* 91.

But note that in case of treason, neither the principall nor accessary shall be bailed.

*Principals.* Also the said statute of *Westm. 1. cap. 15.* doth no more restrain the principalls (to be bailed) than the accessaries, in those cases where the same statute doth not prohibite to let to Mainprise; and therefore if a man be indicted of Burglary as principall, yet he may be bailed. *Stamf.* 24. *Br.* 56. 29. *Ass. pl.* 44. i

*Stamf.* 74. Also the principall in an appeale of robbery may bee bailed; and so may hee bee bailed upon an indictment of robbery. *Br.* 61. 75. & 97. And yet in an appeale of robbery, the Booke 6. *H. 7. f. 1. b.* seemes to the contrary.

*Stamf.* 71. *Br.* 56. 58. 97. But the principall in the death of a man, is not baileable either by the Common Law, or by the Statute of *Westm. 1.* yet see hereof before in this title, that the Justices of the Kings Bench doe use to baile them. Also see there for what homicides the Justices of peace may baile one that is a principall.

*Trespasse.* 5. First, those that be charged with (or guilty of) any Trespasse, that toucheth not losse of life, nor member, be baileable by the Statute of *West. 1. cap. 15.* But yet let the Justice of peace have a care that baile be not prohibited by any other latter Statute in such cases of Trespasse.

*Fitz.* 250. 8. *Lamb.* 337. *Br.* 97. If any person be committed to prison, by proceffe from the Sessions made upon an indictment upon any penall Statute (not prohibiting baile) he may be bailed (out of Sessions) by two Justices of peace, the one being of the *Quorum.*

Or he may have a Writ out of the Chancery directed to the Justice of peace, or to the Sheriffe) to take surety of him for his appearance. before the

the Justices at their Sessions, &c. Or he may have a *Certiorari* to remove the Record into the Kings Bench, and a *Habeas Corpus* to remove the body thither also. *Fitz. 250. g. h. i. & 251. c.*

If Proceſſe from the Sessions ſhall goe forth upon any indiſtment of *cro. 197.* treſpaſſe, &c. it ſeemeth that any one Juſtice of peace may take baile of the *234.* partie, to appeare at the day, &c. to answer to the indiſtment: and the ſame Juſtice may thereupon make his *Superſedeas de cap. indiſt.* (and ſo of the Exigent) for otherwiſe, beſides the miſchiefe of imprisonment, the party may be outlawed before the Sessions: ſee ſome preſidents therein, *poſtea m. Preſidents.*

Note, that the Juſtices of Peace are not to baile any priſoner, except the priſoner be committed for ſuch cauſe, whereof the ſaid Juſtices of peace be competent Judges, *ſc.* ſuch cauſes as they may heare and determine.

And therefore if a man be taken upon proceſſe of rebellion, iſſuing out *Lamb 337. 7* of the Chancery, or Star-Chamber, the Juſtices of peace are not to baile *Cromp 152.* him. And M. *Cromp.* reporteth of two Juſtices of peace, who were fined for bailing one in ſuch a caſe.

If a man be arreſted by force of any Proceſſe, Writ, Bill, or Warrant, in any action perſonall, the Juſtices of peace are not to baile him.

Perſons condemned in any of the Kings Courts, and by vertue thereof committed to priſon: and perſons being in execution upon any ſtatute or recogniſſance, &c. at the ſuit of any perſon, the Juſtices of peace are not to baile any ſuch.

6 Sixtly, he that is appealed by an *Approver*, (being no common theefe, *P. Mainp. 2.* nor defamed, after the death of the *Approver*) is baileable by the ſaid ſta- *Fitz 250. d. j* tute of *Weſt. 1.*

\* Note, that a man cannot become an *Approver*, (or an accuſer of o- *Stam. 144. a.* thers) before Juſtices of Peace (for that the Juſtices of Peace have no au- *Br. Peace 1.* thority to aſſigne him a Coroner,) nevertheleſſe it ſeemeth both reaſona- *Abr. D'off. 72. 76.* ble, and ſerviceable, that if a felon will become an *Approver*, that is, will confeſſe his felony, and alſo accuſe others (that were coadjutors with him in doing the ſame felony, or in other felonies) before a Juſtice of peace, that ſuch Juſtice may take his confeſſion, and commit him to the gaole, and may alſo grant out his Warrants for the apprehending of the others that are ſo accuſed.

Concerning an Approver, obſerve theſe Rules:

- 1 One cannot be an Approver, but in felony or treaſon. *9. H. 6.*
- 2 One cannot be an Approver, but upon an inditement only. *1. H. 7. 5.*
- 3 An Approver muſt accuſe the other of ſuch an offence as he himſelfe did together with the other. *Stamf. 143.*

Againe, the stat. of 23. H.6. c. 10. taketh away baile from all such as be in prison, by condemnation, execution, *Capias utlagatum*, excommunication, surety for the peace, or by the speciall commandement of any Justice, prohibiting that such be not bailed, either by the Sheriffe or other officer or minister.

There be divers other statutes which do tak away baile from the offenders thereof, and that not only upon their solemn conviction after publike hearing, triall, and judgement, but also upon the record of one or two Justices of peace, or by private examination and confession of the offender, or prooffe of witnesses, or such other private triall had before the Justices of peace out of their Sessions, most of which I have here set downe, leaving the rest to the Readers better search.

*Where bailment is taken away by Statute. CAP. 115.*

Where  
baile is ta-  
ken away.

**N**O person being imprisoned or taken for any of the offences or causes hereunder mentioned, shall be bailed or let to mainprise otherwise than as hereafter followeth, &c.

13. E. 1. c. 11.  
Where  
baile is ta-  
ken away.

Such as have abjured the Realm shall not be bailed. *Vest. 1. c. 15.*

Accomptants found in arrerages before Auditors, shall bee imprisoned (without baile) untill they have satisfied their master all arrerages.

Alehouse-keeper without licence, shall be committed to prison for 3. dayes without baile: and before his delivery shall enter recognisance with two sureties, that he shall not keepe any common Alehouse, &c. *Vide antea tit Alehouses. P. 4.*

Alehouse-keeper prohibited by two Justices of peace, and notwithstanding continueth his selling, &c. he shall be comitted for three dayes, as aforesaid. *Ibid.*

Alehouse-keepers without licence, for their second offence shalbe committed to the house of correction for one moneth: And for every such their offence after, shall be committed to the house of correction, there to remaine untill they bee delivered by order from the generall Sessions, *Ibid.*

See antea tit.  
Alehouse.

Alehouse-keepers, Inn-keepers, and viſtuallers, which shall suffer townsmen to continue drinking in their houses, contrary to the Statute of 1. Jac. cap. 9.

Or which shall sell lesse than one full Ale quart of their best Beere or Ale for 1. d. and of the small two quarts for one peny.

Such offenders not having sufficient whereby to bee distrained for the forfeiture, shall be committed to prison untill they have payed the penalty.

Aliens



Aliens conveying Bowes, or Arrowes, into any parts beyond the seas without licence, shall be committed untill they have made fine (by the discretion of the Justices of peace in their sessions) and given suretie for the payment thereof. 33. *H. cap. 9. P. Arch. 6.*

Appellers, or Approvers shall not be bailed. *West. cap. 15.*

Nor he which is appelled by an Approver *ibid.*

Armour. Persons going or riding armed contrary to the statute of Northampton, and being thereof convicted, shall bee imprisoned untill they have payed such fine as shall be therefore imposed upon them. See *postea sub hoc tit.*

Arrest. If any person shall procure one to bee arrested in another mans name, he not knowing thereof, or without his consent, such offender being convicted thereof shall suffer six months imprisonment without baile; and before his delivery shall pay to the party so arrested, treble costs, damages, and expences; and also shall pay unto the person in whose name he procureth such arrest, tenne pound for every such offence. *8. E. 1. c. 2. P. Damm. 3.*

If any of a petty Jury in London shall be attainted, by the verdict of a grand Jurie, and therefore committed to prison; Or if any of a petty Jurie in London, shall receive any money, or reward, or promise thereof, of the defendants in the attaint, for the intent to give such his or their verdict.

As also the defendants giving or promising such reward, &c. every such offender being thereof committed to prison, shall there remaine without baile, &c. *12. H. 7. cap. 21.*

Bastard. The mother, or reputed father of a bastard child, that shall not performe the Justices order, after notice thereof, shall be imprisoned untill they shall put in sureties according to the statute. See before *tit Bastardy*, *P. Bast. 1.* Where baile is taken away.

The mother of a bastard-child, committed to the house of correction, for her first offence, shall there remaine for one whole yeare, and for her second offence for one whole yeare, and further untill she can put in good sureties for her good behaviour, not to offend so againe. See *ib.*

Breakers of prison are not baileable. *West. 1. 15.*

Bridges. Surveyors and Collectors, appointed for the repairing of bridges, if they refuse to account of the money by them received, they shall be imprisoned untill they have truly accounted. *22. H. 8. cap. 5. P. Bridges 4.*

Burners of houses feloniously are not baileable. *West. 1. c. 15.*

Persons conspiring to indite another of felony, are not mainpernable or baileable. *27. Aff. Pl. 12. Fit. Mainp. 7.*

Constables and Churchwardens, neglecting to levie the forfeitures,

for abuses in Alehouses, &c. not having sufficient whereby to bee distrained for their forfeiture of forty shillings, they shall be committed to prison untill they have payed the same forfeiture. See *antea tit. Alehouses*, 1. *1st cap. 9.*

Constables neglecting to execute the Iustices warrant concerning Alehouses unlicensed, the Constable shall be committed to the county gaole, there to remaine without baile, untill he hath punished the Alehouse-keeper, or untill the said Constable shall pay 40. s. to the use of the poore. 3. *Caroli Regis.*

See 23. H. 6. cap. 10. Constables neglecting to whip trespassers in corne, woods, or orchards, &c. (at the Iustices commandement) shall be imprisoned untill they have caused the offender to be whipped. See *tit trespassse.*

Persons condemned in any of the Kings, Courts, and by vertue thereof committed to prison, they shall not be Bailed untill they have agreed with the plaintiffe. 1. *R. 2. c. 12. 2. H. 5. c. 2. Fitz. N. B. 121. a.*

Conjurers, *vide* Witches.

Counterfeiters of the K. scale, or money, are not Baileable. *West. 1. c. 15.*

Cloth. Refusers to be overseers of cloth shall be imprisoned untill they have paid the forf. See *antea, tit. Cloth, cap. 11.*

Such persons as shall be convicted for making of deceiveable cloth, if two Iustices of peace shall make certificate thereof, and make their warrant to the Churchwardens, &c. for the levying of the forfeitures; and that the said offenders shall not have whereby they may be distrained for the same forf. the said two Iust. of peace may commit the offenders to the common gaole, there to remaine without baile, untill payment shall be made of the summes so forfeited, &c. *hic antea Cloth.*

Deere. Persons committed to prison for committing any offence prohibited by the stat. 5. *El. cap. 21.* concerning unlawfull hunting or killing of deere, shall remain there three moneths, and further, untill they shall find sufficient sureties for their good behaviour for seaven yeares, &c. See *hic postea hunting.*

Where  
baile is  
taken away.

Dyers, using Logwood, and being thereof convicted, they shall remain in prison without baile, untill they have satisfied the forf. 23. *El. cap. 9. P. Dying 1. & 39. El. cap. 11.*

Also such offence (of using Logwood) being found by the examination of any Iustice of peace, if the offender shall refuse to be bound (by the said Iustice) to appeare at the next gaole delivery, or quarter Sessions, &c. then the said Iustice of peace may commit such offender to the gaole, there to remaine untill such offender shall be bound accordingly. See *antea tit. Dying. 39. El. cap. 11.*

Excommunicate

Excommunicate persons, taken by a Writ de *Excommunicato capiendo*, *West. 1. 13.* or yeelding their bodies to the Sheriffe or other officer, upon any Writ of *Capias* awarded, and Proclamation thereupon made, according to the stat. *5. El. 23.* of *5. El. cap. 23.* provided for the due execution of the said Writ de *Excom. capiendo*, such persons shall not be bailed. *Sec 23 H. 6. c. 10.*

*Execution.* Such persons as are in execution, upon any statute or recognisance or upon judgement given in the kings Court, at the suit of any person, they shall not be bailed untill they have agreed with the plaintife, *1. R. 2. c. 12. 23. H. 6. c. 10. Fitz. Na. Br. fol. 93. c. 8. & 12 E. 4.* And yet then the Iustices of peace are not to baile them.

*Fesants*; see *Partridges*.

Felons, taken for the death of a man, are not baileable; and yet if it be not murder, and their offence not apparent, it seemeth they may be bailed. See *hic antea cap. 114.*

2 Felons taken with the manner are no baileable. *West. 1. cap. 15.*

3 Nor if it be apparently knowne that they did the felony. *Ibid.*

4 Nor if they confesse the felony upon their examination before the Iustice of peace. *Crom. 152. b.*

5 Nor if he be a theefe openly knowne. *West. 1. 15.*

6 Nor if he be of evill fame by credible report. *Br. Mainp. 75.*

Yet in these former cases of felony, if the theft be not twelve pence or above the value of twelve pence, the Iustices of peace may baile the prisoner, it being no felony of death.

7 Nor he which is convict, or attaint of felony, is not baileable. See before *sub hoc tit.*

Accessaries in felony shall not be bailed, after that the Principall (or any one Principall) is attainted. But before the Principall is attainted, the Accessary is baileable by the Common law. *Stamf. 71.*

*Fish.* Destroyers of ponds, pooles, or moates, wherein any fish are, or *5 El. c. 11.* unlawfully to fish in any severall pond, poole, or moate, to the intent to *P. Fish 71.* take, kill, or destroy any fish there; every such offender being thereof lawfully convicted, shall have three moneths imprisonment, and then shall find sufficient sureties for their good behaviour for seven yeares after, or else shall remaine in prison without baile, untill they shall have found sureties accordingly.

2 Gageors, Packers, or Searchers of fish, that shall take any extortion for doing their office, shall have forty dayes imprisonment without baile. *11. H. 7. c. 23. P. F. sh 11.*

3 Eaters of flesh upon any fish day, shall forfeit and pay for every time twenty shillings, or else suffer one moneths imprisonment without baile *25. Pl. c. 7. P. F. sh d. 1. wh re* (after any lawfull conviction in that behalfe.) *5. El. cap. 5.* baile is taken away.



Forcible Entrie, or Detainer ; persons convicted thereof shall not be bailed, untill they have payed their fine, or have found sureties by recognizance for payment thereof. See *antea tit. Forcible Entrie.*

Forestallers, Regrators, and Engrossers, being thereof convicted, shall be imprisoned for two moneths without baile, *5. Ed. 6. ca. 14. P. 4.*

Forgers of any Deed, writing sealed, will, or court roll :

2 And the assenters thereto :

3 And the publishers thereof, knowing the same, &c.

5. El. c. 14.  
P. 1. 2.

Every of the offenders aforesaid ( in cases of forgerie ) being thereof convicted, shall suffer perpetuall imprisonment during their lives, where any mans estate of inheritance, freehold or copyhold, shall be defeated, charged, or molested thereby : otherwise the offenders shall suffer one yeeres imprisonment without baile.

*Fowle.* Destroyers of any Feasant, Partridge, Pigeon, or house-dove ( or of any Hearne, Mallard, Ducke, Teale, or such other fowle ; ) Or to shoot at any such fowle, and the offence proved before any two Justices of peace ; every such offender shall be committed for three moneths without baile, unlesse the offender shall forthwith pay to the use of the poore there, xx.s. for every such fowle so destroyed, &c. See *antea tit. Partridges.*

*Fraudulent conveyances,* gifts, bonds, or suits, &c.

1 The parties thereto :

13. El. ca. 5.  
P. 1. 2.

2 The defenders, or justifiers thereof, or putters thereof in ure, knowing the same :

3 And those which shall assigne over any lands, leases, or goods so to them conveyed, knowing the same ;

Every person being of any of these last offences lawfully convicted, shall suffer imprisonment one halfe yeere without baile, See more *Stat. 14. El. 11. & 27. El. cap. 4.*

*Games unlawfull.*

33. H. 8. 5.

1 The maintainers of houses, or places, for any unlawfull game :

2 Players in common houses or places at any such game :

3 Players (elsewhere) at any unlawfull game :

Every Justice of peace, seeing or finding any such offence, may imprison the offenders till they find sureties by Recognizance, no more to offend in the premisses &c. See *antea tit. Games unlawfull.*

*Gaoles.* Collectors, or Surveyors for Gaoles ( in certaine Shires ) refusing to make account, shall be committed to prison, there to remaine untill they have made a true account. *23. H. 8. cap. 25. El. c. 24. & 13. El. c. 25.* But these statutes are herein now expired.

*Gunnies.* Such persons as shall shoot in, keepe, carry, or use any Gunne, Dag,

Dag, Crosse-bow, or Stone-bow, contrary to the stat. of 33.H.8. cap.6. (upon prooffe thereof made before any Justice of peace) shall be imprisoned untill they have payed ten pounds for every such offence. See *antea tit. Gunnes.*

No person under the degree of a Lord, shall shoot in any hand-gun, within any Citie or Towne, at any fowle, or other marke upon any Church, house, or Dove-coate : Neither shall any person shoot in any place, any haile-shot, or any moe pellets than one, at one time, upon paine to forfeit ten pounds, and to have three moneths imprisonment. 2 & 3.Ed.6.cap.14.

*Hares.* Every person which shall shoot at, kill, or destroy, with any Gun, or Bow, any Hare :

2 Or shall trace, or course any Hare in the snow :

3 Or shall take or destroy any Hare with cords, or any other engine :

Any of these last offences being proved before any two Justices of peace, the offender shall be committed for three moneths without baile, unless the offender shall forthwith pay to the use of the poore there, xx.s. for every Hare so destroyed or taken. See *ant. tit. Partridges.* Where baile is taken away.

*Hatters.* Which shall take above two apprentices :

2 Or which shall take an apprentice for lesse time than 7. yeeres : The offenders in either of the former cases, shall suffer one moneths imprisonment without baile. 8.El.c.11. *P.Hats* 3.

*Hawkes.* Takers (unlawfully) of any Hawkes, or of their egges, out of another mans ground, and being thereof lawfully convicted, shall have three moneths imprisonment, and then shall find sureties for their good behaviour for seven yeeres after; or else shall remaine in prison without baile, untill they find sureties accordingly. 5.El.31.  
P.Hawks &c.  
See 11.H.7.  
cap.7.  
bic postea  
Partridges.

*Hawkers.* Betweene the first day of *Iuly*, and the 31 of *August*, the offence being proved before any two Justices of peace, the offenders shall be committed to the common Gaole for one moneth without baile, unless they pay forthwith 40 s. for every such Hawking, and xx.s. for every Feasant, or Partridge, that they shall so kill, or take. 7.Ia.11. See *antea tit. Partridges.*

*Highwayes.* Bayliffs, and High-Constables, which shall not pay the forfeitures by them collected, shall be imprisoned untill they have payed the same. See before *tit. Highwayes. 2.Ph. & M.cap.8.P.11.*

*Honey.* See *Waxe.*

*Hostelers,* or *Inne-holders,* which shall make any horse-bread (contrary to the Statute 21.Iac.cap.21.) Or which shall not sell their horse-bread, hay, oats, beanes, pease, provander, or other kind of victuall (for man.)

man or beast) for reasonable gaine; and being thereof lawfully convicted, &c. the second time, shall be imprisoned by the space of one moneth without baile. 21. *1a. Regis, cap. 21.*

So of such Hostlers, and Inne-holders as are allowed by the said Statute to make horse-bred within their houses, if the horse-bred which any of them shall make be not sufficient, lawfull, and due of assise, &c. and that they be thereof lawfully convicted the second time, they shall be imprisoned one moneth without baile. *Ibid.*

*Hunting.* If any lay man, not having in land 40 s. *per ann.* Or if any Priest or Clerke, not having x. l. living *per an.* shall have or keep any hound, Greyhound, or other Dogge for to hunt, or any Ferets, Hays, Harepipes, Cords, Nets, or other Engines, to take or destroy Deere, Hare, Conies, or other Gentlemens game, and shall bee thereof convicted at the Sess. of the peace, every such offender shall be imprisoned for one whole yeere. 13 *R. 2. ca. 13. P. 1.*

If any person shall keepe any Greyhound for Deere, or Hare, not having sufficient living, and shall be thereof convicted before any two Iustices of peace, he shall be committed for three moneths without baile, unlessse he forthwith pay forrie shillings for having such Greyhound. See before *tit. Partridges. 1. Jac. ca. 27.*

*Hunters,* and takers of the Kings Deere. See the Statute of *Charta de Forest. cap. 10.*

Where  
baile is ta-  
ken away.

Hunters, or killers of any Deere or Conies (in the night or day time) in any Parke or Warren, or in any other inclosed grounds, and being thereof lawfully convicted, every such offender shall suffer three moneths imprisonment, and find sufficient sureties for his good behaviour for the space of seven yeeres after, or else continue still in prison without baile, untill they shall find sureties accordingly. 5. *El. ca. 21. 3. 1a. ca. 13. P. Forests 9. & 7. 1a. 13.*

The Stat. of *Westm. 1. ca. 20.* provideth that trespassers in Parkes, and Ponds, being hereof attainted, shall yeeld to the party wronged great dammagages, and shall have three yeeres imprisonment, making fine at the Kings pleasure, and at the end of three yeeres find good sureties not to commit the like trespassse afterwards, or for want of such sureties shall abjure the Realme, or be outlawed. See *Fit. 67. d. & Dyer 238. 5 H. 5. fol. 1. Fit. Judgement 62.*

But note, that this stat. *de malefactoribus in parcis*, extendeth onely to hunting, or killing of beasts there, and not to other trespassses, 34. *E. 3. fol. 11. Fitz. Judgement, 144.* And if a man hunts there, or shall come into a parke but for that purpose, yet he shall be punished according to this stat. *Fit. Judgement 62.*

The



The stat. 19. H. 7. 11. ordaineth, that if any person having no Parke &c. of his own, shall keepe any Deere, hayes, or Buckstalls; or if any person shall stalke at any Deere; without licence, the offenders being thereof convicted, shall be committed to prison, till they have found surety for the payment of the forfeiture of the statute.

*King.* Speakers of false news, which may cause discord between the King and his people, &c.

2. And speakers of false news, or lyes, of any the Peeres, or great Officers of the Realme.

The offenders in either of the former cases shall be imprisoned untill they have brought him into the court, who was first author of the tale, 3. *E. 1. ca. 33. 2 R. 2. c. 5. P. Newes 1. See Dyer 155. & 285. and the statutes of 1 & 2 Ph. & Mar. ca. 3. 1. El. c. 6. & 23. El. c. 2.*

3. No person committed by the speciall commandement of the King, or by the commandement of any of his privie Councill, shall bee bailed. See *antea sub hoc tit.*

4. No person committed by the speciall commandement of any of the Kings Justices, shall be bailed *P. Mainp. 1. & 23. H. 6. c. 10. See 16.*

5. So in all cases, where a stat. ordaineth, that an offender shall be imprisoned at the Kings will or pleasure, there the prisoner cannot be bailed or delivered, untill the King hath signified his pleasure of him: (as if one be imprisoned for going or riding armed contrary to the stat. of *Northampton*, made *An. 2 E. 3. c. 3.*) 24. *E. 3. f. 3. Br Contempts 6.* *Stamf. 77. b. Br. Main. 40.*

And in such cases, the prisoner is to redeeme his liberty with some portion of money, as he can best agree with the King or his Just. for the same: and the Justices before whom such an offender shall be convict, may assesse such fine or ranome, according to their discretions, and upon payment thereof may baile the prisoner; for the King therein signifieth his pleasure by the mouths of his Justices. See the first title of *Forcible entry.* *Lamb. 556.*

Inne-keepers, or Inholders, see *hic c. 115. tit Alehouse keeper, & Hosteler.*

*Labourers and Artificers* departing from their worke before it bee finished, shall have one moneths imprisonment without baile 5. *El. c. 4. P. 5 Eliz. Labor. 10.* *Where bail is taken away.*

2 Servants departing before their terme be ended (unlesse it be for some cause to be allowed by some Justice of Peace.)

3 Servants departing at the end of their term, without any quarters warning given before two lawfull witnesses.

4 Persons (compellable to serve) that upon request made, shall refuse to serve for the wages rated and appointed by Proclamation, &c.

5 Persons (compellable to serve) that have promised or covenanted to serve and doe not serve accordingly.

5 *Eliz. 4.*  
*P. Lab. 6.* Every of these foure last recited offenders (upon prooffe of the offence before any two Justices of peace, &c.) shall be committed to ward, there to remain without baile, untill he shall be bound (to the partie offended) to serve and continue with him according to the statute.

*P. Lab. 24.* 6 Persons refusing to be bound apprentices (according to the statute) upon complaint thereof made to any Justice of peace, hee may commit such offenders to ward, who shall there remain untill they will be bound to serve according to the statute, 5 *Eliz. 4.*

*P. Lib. 4.* 7 Women (of the age of 12 yeeres, and under 40 and unmarried) that shall refuse to serve, they shall be committed to ward, there to remain untill they shall be bound to serve according to the stat. 5 *Eliz. 4.*

8. Masters giving wages, and servants (workemen or labourers) taking wages (or other commodity) contrary to the rates assessed by Proclamation, &c. every such M shall have ten daies imprisonment without baile; and every such servant, workeman, or labourer, shall have 21 daies imprisonment without baile, 5 *Eliz. 4. P. Lab. 4. hic cap. 31.*

8 *H. 6. 4.*  
*P. Liver, 2.* *Liveries.* Such persons as at their proper costs shall buy, or weare any liveries, cloths, or hats to have maintenance, and be thereof convicted, shall have one whole yeeres imprisonment without bail: but this stat. is now repealed by the stat. 3 *Car. 4.*

In an appeale of *Mayhem*, where upon evidence the act shall appeare to be heynous, the offender or defendant shall not be bailed. 6 *H. 7. f. 1. fi. 70.*

39 *Eliz. 16.* *Maulting.* If any person shal disobey the restraint of maulting or any other order made in Sessions touching the same, and be thereof convicted (before any two Justices of peace) he shall be committed to the Gaole for three daies (without baile) and after there to remain untill he shall become bound in 40 l. to performe and obey such order or restraint. See

Where  
 baile is taken  
 a way.

*antea, tit. Mauls.*

If any person shall buy any barley to mault, after such a restraint, he shall be imprisoned as aforesaid *ibid.*

*Money.* Persons taken for falsifying the Kings money shall not be bailed. *West. 1. cap. 15.*

*Musters.* Persons absenting themselves from Musters, being commanded to muster before any having authority for the same, and having no lawfull impediment.

2 And persons (being commanded to muster as aforesaid) that shall not bring with them their best furniture and armour, which they have for their own person.

The

The offenders in either of the former cases, shall for every such offence <sup>4 & 5 P. & M. 3.</sup> suffer ten dayes imprisonment without baile, unlesse they agree with two of the said Commissioners to pay to the Kings use 40 s. a time for every such offence. P. *Captains*, 12.

To Muster is to make a shew of Souldiers well armed and trained before the Kings Commissioners in some open field, *ubi se ostendentes praludunt pralio*, Co. l. 71.

And it is worthy of observation, that by the law before the Conquest, the Musters and shewing of armor should be *uno, eodemque die per univcrsum regnum, ne aliqui possint arma familiaribus & votis accommodare*, &c. *ibid.*

*Newes.* See before King.

*Oath.* Refusers to take the oath of allegiance, (being lawfully tendred <sup>3 Ia. 4.</sup> to them shall be committed to the common gaole, there to remaine with- <sup>7 Ia. 6.</sup> out baile, untill the next Assises or quater Sessions. See before *tit. Oath, and Recusants.*

*Parliament*, and Knights of the Parliament, See *hic postea Sheriffes.*

*Parke.* Hunting therein, see *hic Hunting, and Hunters.*

*Partridges.* If any person shall shoot at, kill, or destroy (with any gun, or bow) any Partridge, Feasant, or other fowle, &c.

2 Or shall take, kill, or destroy any Partridge, Feasant; or Pigeon, with setting dogs and nets, or with any manner of nets, engines, or instruments.

3 Or shall take out of their nests, or willingly destroy in the nest, the egges of any Partridges, Feasant, or Swan.

4 Or shall have, or keepe any setting dog, or net, to take Partridges, or Feasants, (except they have sufficiencie of estate, &c.)

Every of these foure last recited offenders (upon prooffe of the offence before any two Justices of peace) shall be committed to the common Gaole, there to remain for three moneths without baile, unless the offender shall forthwith pay xx. s. for every such fowle and egge to taken or destroyed; and 40 s. for having such setting dogge, or net. See *tit. Partridges.* <sup>114. 37.</sup>

5 Hawkers at Partridge, or Feasant. in July or August, (upon prooffe <sup>7 Ia. 11.</sup> of the offence before any two Justices of peace) every such offender shall be committed to the common gaole, there to remain for one moneth without baile, unless the offender shall forthwith pay 40. s. for vWhere every such hawking, and 20. s. for every Feasant or Partridge so killed or <sup>baile is taken away.</sup> taken, See *ibid.*

6. Persons convicted according to the statute of 23 *El. c. 10.* for de- <sup>23 *El. c. 10.*</sup>stroying  
Ecc 2



stroying or taking of Peasants or Partridges in the night time, shall have one moneths imprisonment without baile, unless they pay the penaltie of that stat. within ten dayes; and further to be come bound with good sureties for the space of two yeers, not to offend so again.

11 H. 7. 17. 7. Persons convicted according to the stat. of 11 H. 7. c. 17. for taking the egges of any hawke, or swan, out of their nests, shall be imprisoned for a yeere and a day, and fine at the Kings will. See *Hawkes*.

5 Eliz. c. 9. Perjury Persons committing perjurie, by his or their deposition, in any court of record, or court Baron, being thereof lawfully convicted, shall have fixe moneths imprisonment without baile. P. Per. 1. 2. & 14. Eliz: cap. 11.

2. So of procurers of such perjurie; they being thereof lawfully convicted, and having not to pay the penaltie of the statute, they shall have one yeeres imprisonment without baile.

Physicians. He which is committed to prison by the President of the Colledge of the facultie of Physick in London, &c. shall there remaine without baile, untill he shall be discharged by the same President, or by such as they shall authorize, 1 M. cap. 9.

1 Jac. 31. Plague. Refusers to pay their rates, for the reliefe of persons infected with the plague, and not having whereon to be distrained for such their rates, they shall be committed to the gaol, there to remain without baile untill they shall satisfie the same, and the arerages. See *tit. Plague*.

43 Eliz. 2. Poore. Refusers to pay their rates towards the reliefe of their poore, setting them on worke, or putting out of poor children to be apprentices, and not having whereon to be distrained for such their rates, they shall be committed to the gaole, there to remain without baile, untill they shall pay the same, and the arerages.

P. 2. 2 Overseers (of the poore) refusing to make their account, or refusing to pay (to the new Overseers) such arerages, summes of money, or stock, as shall remain in their hands upon their account made; they shall bee committed to the gaole, untill they have performed the same. See *antea. tit. Poore*.

P. 2. 3 Overseers, negligent (otherwise) in their office, shall forfeit for every default xx.s. And not having whereon to be distrained for such forfeiture they shall be committed to the Gaol, there to remain without bail, untill the said forfeiture shall be paid. See *ibid*.

P. 8. 11. 4 The grandfather or grandchild, or other parents or children, refusing to relieve one the other, in such manner as shall bee assisted by the Justice of peace at their Sessions, shall forfeit for such default xx.s. for every moneth, and not having whereon to be distrained for such forfeiture, they

they shall be imprisoned as aforesaid, untill the said forfeiture shall be paid.  
See *ib.*

5. Refusers to pay their rates towards the reliefe of the Prisoners in the Kings Bench, Marshallsey, and not having whereon to be distrained for such rates, they shall be imprisoned without baile, untill they shall pay the same. See *antea*, tit. *Stock of the Shire*. P. 13.  
Where  
bail is ta-  
ken away.  
P. Sacram. 2

*Prayers*. Such as offend against the statute 1 *El. c. 2.* concerning Uniformity of Common prayer and service in the Church, and be thereof lawfully convicted (by verdict of 12. men, or by their own confession, or by the notorious evidence of the fact) they shall be committed without baile; see the stat. 1 *El. 2.* for in some cases the offender shall suffer sixe moneths imprisonment, in other cases one whole yeeres imprisonment, and in other cases imprisonment during life.

*Preachers*. Disturbers of Preachers in the time of their Sermon, and their aiders and procurers. 1 *Mar. 3*

2. Such as shall disturb the arresting of any such offender :

3. Such as shall rescue any such offender, being apprehended :

Every such offender (being thereof convicted before any two Just. of 1 *M. 1. c. 3.* peace) shall be committed to the gaole, there to remain without baile for 1 *P. 1. 2.* three moneths, and further till the next quarter Sessions, &c. But *quare* if this stat. be in force, *hic*, cap. 41.

*Prison*; breakers thereof shall not be bailed. *West 1. cap. 15.*

*Prophesiers*, to the intent to make disturbance within the Kings Domini- 5 *El. c. 15.* ons, every such offender being thereof lawfully convicted, for his offence shall suffer one yeeres imprisonment without baile; and for the second offence shall suffer imprisonment without baile during his life. P. *Prophef. 1.*

*Purveyors*, taking purveyance within five miles of either University, of 2 & 3 *P. & Cambridge or Oxford*, without licence, &c. and being thereof convicted, *M. c. 15.* they shall suffer three moneths imprisonment without baile. See *antea*, *P. Purv. 32.* tit. *Purveyors*.

*Purveyors* (or other officer) of any nobleman, &c. taking any thing of any subject against his will, such offenders shall be committed to prison without baile, untill they shall redeliver the goods so taken, or the value thereof. See *ibid.* 23 *H. 6. c. 14*  
*P. Purv. 1.*

*Recusants*. Persons suspected to be Jesuits, Seminaries or massing Priests, 15 *El. c. 2.* and being examined thereof (by any having lawfull authority in that behalte) if they shall refuse to answer directly thereto, they shall be imprisoned without baile, untill they shall make direct answer thereto. *Ed. 6. 2.* *El. cap. 2.*

Every party grieved, his Executors  
or

1ac. 4.

2 Persons suspected, if they shal refuse to answer the Justice of peace upon oath, whether they be Recusants or no, they shall be committed to the common gaole, there to remain without baile, untill the next Assises or Quarter Sessions. See *antea, tit Recusants*.

7la. 6.

3 Popish Recusants refusing to take the oath of allegiance (being lawfully tendered them) they shall be imprisoned till the next assises or quarter sessions, as aforesaid. See *ibid*.

4 Every other person of the age of 18. yeeres, refusing to take the oath of allegiance, shall be committed untill the next assises or quarter sessions, as aforesaid, See *antea, tit, Oath*.

1bid.

V Where  
baile is ta-  
ken aw. y.

5 A woman recusant convicted, and not conforming her selfe, being therefore committed to prison, shall there remain without baile untill shee shall conforme her selfe. See *antea, tit, Recusants*.

3 Ia. 4.

7 Ia. 6.

6. A woman covert, refusing in the open assises, or at the quarter Sess. of the peace, to take the oath of allegiance, shee shall be committed to the common gaole without baile, untill shee will take the said Oath.

1 Ja. 4.

7 If any woman or child under the age of 21 yeeres, shal passe over the sea without lawful licence, the master of any ship permitting the same shal suffer imprisonment 12 moneths without baile.

P. Rec. 75.

8 Recusants refusing to declare what armour, &c. they have, or if they or any other person shall hinder or disturb the delivery of such armour to any person lawfully authorized to seise the same; every such offender shall have three moneths imprisonment without baile, 3 Ia. c. 5.

P. Recus. 18.

35. El 1.

9 Recusants and Sectaries, which shall impugn the Kings authority in causes Ecclesiastical:

10 Or that shall perswade others thereto, or from comming to Church to that end and purpose:

11 Or shall meete at any Conventicles, under colour of any exercise of religion (contrary to his Majesties Laws:)

12 Or shall perswade any other to meete at any such Conventicles or meetings:

Every person which shall be lawfully convicted of any of these last 4 offences, shall be committed to prison, there to remaine without baile, untill they conforme themselves to come to Church, and make open submission and declaration of their said conformitie.

Id. 4.

P 8. 11.

13 Persons absent from Church upon any Sunday, and not having whereon to be distrained for the forfeiture, shall be committed untill payment be made thereof. See *antea, tit Recusants*.

Justices Persons above the age of 16 yeeres, which shall absent themselves from ry moneth, and not have paid one moneth, and shall be thereof lawfully convicted



convicted shall forfeit for every moneth twenty pound. And if he shall not be able, or shall fail to pay the same within three moneths after judgment thereof given, he shall be committed to prison, there to remayne untill hee hath paid the said sum, or conforme himselfe to go to Church &c. 23 *El. 1. P. 1. 4.*

So of such persons as shall keep any School-master which shall absent themselves from the Church as aforesaid, or which shall not be allowed by the Ordinary; if such person shall not be able, or shall fail to pay the penalty (*sc. 10 li.* for every moneth) within three moneths, &c. hee shall be committed without bail, as aforesaid, *ibid.*

Persons convicted for Redisseisin, are notailable. *Merton cap. 3. Fitz. 66. e.*

*Rioters* attainted of great Riots, shall have one yeers imprisonment without bail. *P. Riots 11. 2 H. 3. 2.*

All persons convicted (by the view of the Justices, or upon their enquiry, or otherwise) of any Riot, shall be committed untill they have paid their fine. See before *tit. Riots.*

*Rogues* incorrigible, committed to the Gaol, or house of correction, shall remain there untill the next Quarter Sessions. See *antea tit. Rogues.* 39 *El. 4.*

*Servants*, see *Labourers.*

*School-master*, that is a Recusant:

2 Or that is not allowed by the Ordinary; and being of either of the said offences convicted, shall be imprisoned for one whole yeere without baile. *VWhere baile is taken away, 23. El. 1. P. Recus. 2.*

*Sheriffs* not making their election of Knights for the Parliament in their full County, between the houres of eight and eleven in the forenoon: 8 *H. 6. 7. 23 H. 6. 15.*

2 Or returning Knights for the Parliament, contrary to the Statute: *P. Parl. 4.* And being of either of the said offences attainted before the Justices of Assise, (or in the Star-chamber, *Dyer 168.*) they shall be imprisoned for one whole yeer without bail.

Sheriffs, Under-sheriffs, or other persons, making any Warrant for the summons, arresting or attaching of any person to appear in any Court, not having the originall Processe or Writ warranting the same, upon examination and proof thereof before the Judges of Assise, or Judges of the Court, &c. such offenders and their procurers shall be committed to the Gaole, there to remain without bail, untill they have payed (among them) ten li. to the party grieved, and his costs and damages, and also twenty pound a piece to the King. 43 *El. c. 6.*

*Souldiers*, who have purloined their horses, or harnesse, shall be committed without baile, untill hee hath satisfied the party grieved, his Executors or

or Administrators for such horse or harness. See before *tit. Souldier*.

43 *Eliz. 2.* *Stock of the Shire.* Refusers to pay their rates thereto, and not having whereon to be distrained, &c. shall be committed, till they have paid it. *Vide antea tit. Stock.*

*Subsidy.* If any person assessed to the Subsidy shall not pay the same, by reason whereof his body shall be arrested, upon a Precept directed out by the Commissioners of the same Subsidy, &c. he shall remayn in prison without bail, untill he hath paid the same sum wherewith he is chargeable, and also for the Fees of such arrest, *sc.* to him or them that shall execute such precept, 20 pence. See the Statutes of *Grants of Subsidies.*

17 *H. 8. 10.* *Tithes.* The defendant in a suit for Tithes, that disobeyeth the Judges  
32 *H. 8. 7.* sentence, shall be committed without bail, untill hee shall finde sufficient Sureties by Recognizance, &c. to obey and performe that sentence. *Vide tit. Tithes.*

*Transportation.* The Master or Mariners transporting any Corne, Beere, Herring, Whitage, or Wood, without Licence :

*P. Corne 1,* 2 The owners of such things transporting more than they are licensed :  
23.  
1 & 2 *P. &* 3 The Mariners carrying such things into any ship to be transported :  
21. 3. 5. Every such offender shall be imprisoned one whole yeere without bail; and yet see *antea tit. Transpor.* that every man may transport Corn without licence (or danger, as it seems) it being at the prices there mentioned.

18 *Eliz. 8.* 4 The Master or Mariners, transporting, or shipping to that intent, any  
*P. Leather.* Leather, Tallow, or raw Hides, and being thereof convicted, shall have  
30. one yeers imprisonment without bail.

5 Transporters of live sheep :

8 *Eliz. 3.* 6 And every person that shall bring, deliver, send receive, take, or pro-  
*P. Sheep. 1.* cure any live sheep to be conveyed out of any of the Kings Dominions, their aiders, procurers, and comforters :

Where  
bail is ta-  
ken away.  
1 *Iac. 4.* The offenders in either of the former cases, being thereof convicted, shall for the first offence suffer one whole yeers imprisonment without bail.

7 The master of any ship, permitting any women or children under 12 years of age to passe over the Seas without licence, shall suffer 12 moneths imprisonment without bail.

8 Aliens transporting Bows or Arrows: see *Aliens.*

If any man shall transport or convey any Horse, Mare, or Gelding, out of *England* without licence, &c. and be thereof lawfully convicted, hee shall suffer imprisonment by the space of one whole yeere, 1 *Edw. 6. cap. 5.*

*Treason.* Persons committed for any Treason touching the King, they are notailable. *West. 1. c. 15.*

Counterfeiters of money, or of the Kings Seal, are notailable. *West. 1. c. 15. Br. Mainp. 59.*

*Vagabonds*: see before *Rogues*.

*Unlawed persons*, taken for the same, are notailable. *West. 1. 6. 15 & 23 H. 6. c. 10.*

*Wards*. By the Statute of *West. 2. c. 35.* if any person shall ravish (*sc.* shall take and carry away) any Ward, the offender shall have two yeers imprisonment; and if hee doe not restore, or doe marry the child after the yeers of consent, and be not able to satisfie for the marriage, he shall abjure the Realm, or have perpetuall imprisonment: And it is said, that it is at the election of the Justices to award the offender to abjure the Realm, or to have perpetuall imprisonment: and that if the Justices shall award him to perpetuall imprisonment, that the King cannot pardon him that imprisonment, for that it is in lieu of damages to the Plaintiff, and that imprisonment is an execution thereof, the which the King cannot pardon, without the assent of the party Plaintiff.

*Waxe*, and Vessels of Honey; if any person shall counterfeit any the marks thereof, or shall mark them with any other mans mark, and shall be thereof convicted, hee shall suffer three moneths imprisonment without baile. *33 H. 8. P. Waxe 7.*

*Weights*. Falsifiers or Counterfeiters thereof, such offenders (after they be indicted thereof) shall be taken and imprisoned without baile, untill they be acquitted or attainted: and if they be attainted, they shall remaine in prison untill they have made fine and ransome, according to the Justices discretion. *9 H. 5. 8. Parl. 2. Quare* whether this statute be now in force. *P. Ind of P. 91. P. Weights 13.*

*Witches*, Conjurers, Sorcerers, and such others, which shal take upon them to hurt any persons in body, though it be not effected.

2 Or shall take upon them to tell of any treasure, or goods (lost or stolln) where it may be found:

3 Or shall take upon them to provoke any person to love:

4 Or shall hurt any cattel or goods thereby:

Every such offender, being of any the said offences lawfully convicted, shall have one whole yeeres imprisonment without baile. *1 Jac. 22. P. Conjur. 2.*

*Women*. Taking of Women (unmarried and under the age of 16 yeeres) out of the possession of their parents, or other person, (having) lawfully the keeping &c. of them, and against their wills, the offender being thereof convicted, shall be two yeeres imprisoned without baile, &c. *4 Ph. & M. c. 8. P. Women 7.*

2 Taking away and deflouring such maid or woman child, as afore- said: *P. Women 8.*



3 Contracting of marriage with such a maid against the will of, or unknowing of or to the father of such maid, (if he be living) or against the will, &c. of the mother, having the custody and governance of such child.

The offenders in these two last cases, being thereof lawfully convicted, shall have five yeers imprisonment without bail, &c.

See more concerning women, *antea*, *Recognisants*.

Recognisance. CAP. 116.

**A** Recognisance is a Bond of Record, testifying the Recognisor to owe a certain sum of mony to some other: and the acknowledging of the same is to remain of Record, and none can take it but only a Judge or Officer of Record.

And these Recognisances, in some cases, the Justices of Peace are enabled to take, by the expresse words of certain Statutes: but in other cases (as for the peace, and good behaviour, and the like) it is rather in congruity, than by any expresse authority given them either by their Commission, or by Statute.

*From 197.*

*See Fitz.  
82.*

Note wheresoever any Statute giveth them power to take a bond of any man, or to binde over any man to appeare at the Assises, or Sessions, &c. or to take Sureties for any matter or cause, they may take a Recognisance: yea, wheresoever they have authority given them, to cause a man to doe a thing, there it seemeth they have (in congruity) power given them to binde the party by Recognisance to performe or do it: and if the party shall refuse so to be bound, that then the Justice may send him to the Gaole; for it is a rule in law, *Concesso uno aliquo, etiam id concedi videtur, sine quo prius concessum haberi nequit*: But yet inquire of this last case, for there is also another rule, *In generali concessione non veniunt ea, quae quis non esset verisimiliter in specie concessurus*.

*Co. II. 52 a*

I will here set down onely some particulars where the Justices of Peace (out of their Sessions) may take a Recognisance.

One Justice of Peace may take a Recognisance for the Peace.

Also one Justice of Peace may take a Recognisance for the good behaviour (by the Commission:) and these the Justice of Peace may take, either upon diseretion, or upon complaint made to him, or upon a *Supplicavit* delivered to him.

One Justice of Peace may bind by Recognisance such as doe declare any thing against a Felon, to appeare at the Assises, or Sessions, there to give evidence against the offender; and so in divers other cases.

One Justice of Peace may bind by Recognisance such as keep any common houses or places for unlawfull games that they keep the same no longer. See *antea tit. Games, &c.*

And also such as play at unlawfull games, contrary to the Statute of 33 H.8. c.9. that they use the same no more.

One Justice of Peace may bind over persons suspected to use Logwood in dying; and such as can discover the same. See *antea tit. Dying.*

One Justice may bind by Recognisance takers of Partridges, &c. and Hawkers in coine, to appeare at next Sessions to answer their said offences. See *antea, tit. Partridges.*

One Justice of Peace may binde by Recognisance any person convicted for taking or destroying any Feasants, Partridges, fowle, or hare, that they offend not thereafter in any the particulars any more.

Also they use (by way of prevention) to binde Trannellers for Larks, that they shall destroy no Partridges, &c. *Quare* of this, how it is warranted. See *postea tit. Warrants.*

But the binding of Traunellers in this sort seemeth rather to do hurt than good, in that it doth enable or tolerate the use of trannelling in the night time, whereby many Partridges are secretly taken and killed; whereas any two Justices of Peace may more legally prevent that night-taking and destroying of Partridges, by taking away all such Nets, where they shall see cause; the which they may do by force of the Statute, 7 Jac. c. 11. which see here before, *tit. Partridges.*

I have known sundry Proclamations, authorizing and commanding the Justices of Peace (at or before the beginning of the Lent time) to convent and call before them all Taverners, In-holders, Alehouse-keepers, keepers of ordinary Tables, and other Victuallers within the precinct, and rule of the said Justices; and to take bonds (by Recognisance) with sufficient Sureties of evcry of them, and in good sums of money to the Kings Majesties use, that they shall not dresse any flesh in their houses in the Lent time for any respect, nor to suffer it to be eaten there.

One Justice of Peace may binde by Recognisance the Master that shall misuse his apprentice, &c. to appeare at the next Sessions, &c. See *antea tit. Apprentices.*

Two Justices &c. may take Recognisance of Alehouse-keepers, for keeping good orders, &c. See before.

They may bind by Recognisance an Alehouse-keeper (committed for victualling without licence) that he shall keep no more an Alehouse. See *antea, tit. Alehouses.*

Two Justices, &c. may bail prisoners, and upon such bailment they are

to cause the prisoners to find sureties for their appearance, &c. which must be done by Recognisance. See here, *tit. Bailment*.

They may bind the Overseers of cloth by Recognisance, to see the Statute observed. See hereof *antea tit. Cloth*.

Also two Justices of Peace may binde by Recognisance, the Defendant in a suit of tithes, to obey the sentence of the Judge. See *antea tit. Tithes*.

Whether the Justice of Peace may binde an offender against a penall Statute to appear and answer his fault at the Sessions : See hereof *postea tit. Warrants. cap. 117*.

33 H. 3 39.  
P. Accompl.

Note that every obligation and Recognisance taken by Justices of Peace, must be made to the King, and shall be made by these words, *Domino Regi*, upon pain of imprisonment of any person that shall take it otherwise : And all such bonds or recognisance shall be in the nature of a Statute Staple, to all intents. See hereof *postea tit. Recognisances, c. 123*.

A Justice of Peace can take no Recognizance, but onely for such matters as concerne his office. See hereof, *tit. Surety for the peace, antea*.

Note also, that a Recognisance taken by a Justice of Peace is a matter of Record, presently, so soon as it is taken and acknowledged, although it be not made up, but onely entred into his book; nay, although it be not entred, as it seemeth. See *Stamf. 77. a. & Br. Record. 58*. such a matter.

If a Justice of Peace shall take a Recognisance where he hath no authority, it seemeth void. See *hic 155*.

And these Recognisances taken by the Justices of Peace are to be certified by them at their next quarter Sessions : except Recognisance taken of such as shall informe against Felons, and upon bailment of Felons, which by Statute they are appointed to certify at their next generall Gaol delivery. See *antea, tit. Felony*.

For the forms of Recognisance. See hereafter, *tit. Recognisances, cap. 123*.

Warrants. CAP. 117.

**N**OW concerning the Precepts, or Warrants, to be made by the Justices of Peace.

By Parol.  
Lamb. 87.

The Justice of Peace (seeing that he is a Judge of Record) his precept or commandement by word of mouth (in some cases) is as strong as his precept in writing.

34 H. 7. 3, 9

And therefore the Justices of Peace, upon any Riot don in his presence, may command the rioters to be arrested, and cause them to finde sureties for their good behaviour.



So upon an affray, assault, threatening, or other breach of the peace done in his presence, the Justice of Peace may command by word the officer being present, or his owne servant, to arrest such offenders to finde sureties for the peace. See before. *tit. Surety for the peace.*

And where the Justice of Peace commandeth one being present to arrest another that is also in his presence, though that commandement bee by word onely, it is good, and it is reputed as an arrest made by the Justice himselfe, he being present when the arrest is made, *Br. Fx. impris. 33.* See *hic cap. 8.*

But the Just. of P. cannot command by word to arrest another being out of their presence; neither may one in the absence of the Justice arrest another upon his command by parol, but it must be by a precept or warrant in writing, by the greater opinion of the Justices, *14 H 7. 8. Br. Peace 7.*

And yet in case of rioters, the Justice of Peace may by word command his servants to arrest them, in the absence of the Justice, by the opinions of *14 H. 7. 9. 10. Fineux and Tremale, Justices.* See hereof *ante a. tit. Riots*

Next, their warrant or precept by writing, ought to be under their hand and seale, or under their hand at least. See *hic infra.* By writing

And if it bee for the peace or good behaviour, or the like, where sureties are to be found or required, there the warrant ought to containe, the speciall cause and matter, whereupon it is granted, to the intent that the party (upon whom it is to be served) may provide his sureties ready, and take them with him to the Justice of Peace, to be bound for him: but if the warrant be for treason, murder, or felony, or other capitall offence, or for great conspiracies, rebellious assemblies, or the like, it needes not contain any speciall cause, but there the warrant of the Justice of peace may be, to bring the party before him to make answer to such things or matters generally, as shal be objected against him, on the Kings Majesties behalfe: and this is now the common usage, by the report of M. *Crompton.* *The forme*

And I once received a warrant, brought me by one *Thomas Evans* (a Pursivant or messenger of his Majesties chamber) under the hand of the right honourable *Tho. Lord Ellesmere*, late Lord Chancelour of England, for the apprehending of one *James Malin*, for a matter of contempt; and the said warrant was in generall words, *sc.* to answer to such matters as were to be objected against him, without any speciall cause therein mentioned. *An. D. 1687 7*

Also I saw another war. granted under the hand of *Pop. chiefe Justice*, to bring one *Edmonds* (of Barnewell by Cambr.) before him to answer to such matters as he had to object against him, on the Kings Majesties behalfe, without any speciall cause or matter therein set downe. *3 lac.*

The like forme you shall finde in the book of *Entries, tit. Attachment: Non omittas, &c. quin attach. E.H. &c. Ita quod habeas corpus ejus coram Justic. nostris ad Assisas in com. tuo capiend. assig. apud W. in Octab. Sancti Mich. ad respon. nobis de his qua sibi ex parte nostra tunc ibidem objicientur, & ad faciendum ulterius & recipiend. quod Curia nostra de eo consider. in hac parte, &c.*

But it is not safe for a Justice of Peace to grant out his Warrant with a blank, for about 30 *Elix.* one wrote to Sir *I.R.* a Justice of Peace, to send him a Precept or Warrant with a blank, that hee might put therein one whom he would attach upon suspicion of Felony, and the Justice of Peace did so, (granting a Warrant with a blank, where he neither knew the parties name, nor the matter) and for this the Justice was fined in the Star-chamber, as *M. Crompton* reporteth, *Author. des corts. 34.*

Also the Warrant of the Justice of Peace would be under the Seal of the said Justice, for every Justice of Peace, (being a Judge of Record) hath a Seal of his Office, and when he maketh a Warrant under his Seal to the Officer, then the Officer ought to give credence to the Seal, for that is his authority, per *Brudnell. 14 H.8.16.*

14 H.8.16.

Lamb 90.

Again, the Warrant of the Justice of Peace is the better, if it bear date of the place where it was made, and it must expresse the yeer and day when it was made. See 21 H.7.22.

Pls 37.

A Justice of peace who is dwelling out of the County granteth his Warrant to be served within the County, the Officer cannot carry the party out of the County to the Justice of Peace who made the Warrant, but must carry him before some other Justice within the County.

*Quere* whether such a Warrant be good or no.

First, for that a Justice of Peace hath no authority, but in the County where he is a Justice, and in Commission. See *antea c.6.*

And again, for that the date of the place seemeth to be materiall by the books 14 H.8. aforesaid, & 21 H.7.22 *Br. fx. imp. 12.*

Br. Peace 9.

Co. 5.59.

The Justice of Peace may make his Warrant to bring the party before himself, and then the Officer needs not to carry the party before any other Justice. And yet upon a Warrant for the Peace granted *ex officio*, the usuall manner is other wise. See *antea, tit. Surety for the peace.*

Also the Justice of Peace may in some cases make his Warrant to attach the offender to be at the next sessions of the peace there to answer his said offence, &c. See *antea, tit. Counterfeiters; & postea, Warrantis. cap 121.*

If a Justice of Peace shall make his warrant to the Sheriffe to attach one and to bring him to the next Sessions, there to finde Sureties for the peace, &c. it is is good. *Crompt. 135, 136.*

So if the Justice shall make his warrant to warne a man to appeare at the next Sessions, there to give in evidence for the King : And where the Justice shall command one by his warrant to be or appeare at the next Session, &c. if the partie doe not appeare then from that Sessions there shall goe out a precept to attach him for such his contempt. *Cromp. 123.*

A Justice of Peace (*ex officio*, by the first *Affig.* in the Commission) may grant his Warrant to arrest or attach one that hath broken the Peace, committed other misdemeanour against the Peace, to finde Sureties for the peace or good behaviour, as the case shall require. For what cause.

Also the Justices of Peace in divers cases do use to grant their Warrant against a man for his neglect, or other default, as for refusing to pay Town-rates, and the like : And such Warrant may be either to attach the offender to be at the next Sessions, there to answer, &c. or else to bring the offender before the said Justice, or any other Justice, &c. who, finding cause, may binde such an offender to appeare at the next Sessions to answer the said default.

Also wheresoever any statute doth give authority to the Justices of Peace to cause another person to doe a thing, there it seemeth they have power given them (of congruity) to grant their Warrant to bring such person before them, that so they may take order therein. See *Antient Recog. nisanter c. 116.*

But I finde it much controverted, whether a Justice of Peace may grant a Warrant to attach persons suspected of Felony, or against offenders upon a penall Statute, unlesse such persons or offenders be first thereof indicted for that the Justice of Peace, as he is a Judge of Record, so it is said he must have a Record, whereupon he doth award his processe or precept. 14 H 846.  
Br. Peace 6.  
See Br.  
Com. 3.

For the first, some hold that the Justice of Peace may grant his Warrant to attach persons suspected of Felony, for that it seemeth by the first *Affig. navimus*, in the Commission, and by the Statute of 5 Ed. 3. 14. that any one Justice of Peace may cause the Constables to arrest and imprison offenders suspected of Felony, &c. And how shall the Justice of Peace cause this to be done but by his Warrant or commandement.

Againe, if a Felony be done, there is no doubt but that every private man without a Warrant may arrest whomsoever he suspecteth of it, being a man of evill fame, &c. see herooft, *cap. 118. in Arrest.* But if the offender being pursued shall resist, *quere* who shall be aiding to a private man, whose goods are stolne, and who suspecteth another to have stolne them, either to search for his goods, or to apprehend the party suspected, if the Justice of Peace (by his Warrant) shall not command the Constable to aid him therein. If it be objected that the Constab'c may doe all this of his



See *antea*,  
tit.

Examina-  
tion.

2 H. 7.

15. 16.

Pro & con-  
tra.

Lamb 193.

his owne authority, (upon request to him made by the party robbed) bee it true, yet we finde by common experience; that the Constables, without the Justices warrant therein, are, for the most part, both very fearfull, and also remisse herein, as neither knowing their own authority, nor the danger.

Besides, this is no new thing, for there is such a president in the old booke of Justices of peace (*impress. 1561. fo. 41. a.*) yea, it is the common practice at this day, and it seemeth to be very serviceable; and of two evils the lesse is to be chosen *sc.* that an offender, or suspected person, should be imprisoned for a time (though sometimes wrongfully) than that one which hath committed felony should escape unpunished.

14 H. 8. 16.

Br. Peace 6.

Er. *fx. imp.*

3 & 9.

eo. 10. 76.

And yet by the opinion of the Court 14 H. 8. a Justice of Peace cannot make a warrant to arrest a felon, unlesse he be indicted of felony, (or that the Just. himselfe hath suspicion of the felon.) But if the Constable or other officer, shall serve such a Warrant, he shall justifie the same, though the Just. did erre in the awarding thereof. See 24 E. 3. 9.

Lamb. 191.

Crom. 197.

The incon-

venience

thereof.

See Lamb.

192.

Next, for the Justices of peace to bind over, or to grant a warrant against offenders, upon any penall statute, to appeare at the Sessions, to answer to their offence or fault, though such statute bee within the power of the Justice of Peace, yet such warrant, or binding over of such offenders, may seeme not warranted, unlesse it bee specially so appointed in the statute: as it is by the statutes of 5 Eliz. cap. 4. 23 Eliz. 10. 39 El. 11. 33 H. 8. 1. See *antea*, tit. Counterfeiters, Dying, Labourers, Partridges, and Sacraments.

But such offenders ought first to bee indicted, and thereupon proccesse from the Sessions is to bee awarded against them untill they come in, &c.

Cromp 238.

Lamb. 191.

And yet there be sundry presidents of attachiments made from one Justice of peace against labourers and servants, that shall refuse to serve, or that shall depart out of their service, &c. contrary to the statutes, to be before the Justices at their sessions, to answer to their said defaults. But these may seeme also to have beene warranted, and so appointed by the statute of labourers, made an. 25. E. 3. cap. 6. which statute is now repealed by the statute of 5 El. 4.

Also it is usuall, by way of prevention, to binde by Recognisance such as doe tranel for larkes, that they shall destroy no Partridges; as also to binde by recognisance, Butchers and all Victuallers, that they shall not kill nor dresse any flesh in the Lent time, contrary to the Laws: And for these purposes the Justices of Peace doe grant out their warrants to convent the said persons before them: for victuallers (*sc.* Taverners, Inne-holders,

Alc-

Alehouse-keepers, keepers of ordinary tables, and other victuallers) I have knowne sundry proclamations which seem to warrant the Justices of peace therein : but for the other, what Law or warrant there be for it I know not, untill the offender be convicted, see *hic tit. Partridges* Yet see *antea, cap. 66.* where the Justices may in some cases grant their warrants against offenders upon penall statutes. But here the Justices have power to heare and determine out of their Sessions.

Also where the offence prohibited by such a statute amounteth to the breach of the peace, or good behaviour, there it seemeth the Justice may (either upon discretion, or complaint of such an offence and breach of the statute) grant out his warrant, and binde over the offender to the next Quarter Sessions, &c. to answer his said default, and in the meane time to be of good behaviour. See *hic cap. 11. 17. & 31. Servants assaulting their Master.*

The Justice of peace may direct his precept or warrant to the Sheriffe, To whom Bailiffe, Constable, or other officer ; or to any other indifferent person by name, though he be no officer, yea, to any person that he shall think meet ; but yet the safest way is to direct it to the Constables, or to some other sworne officers. *directed. 14. H. 8. 14. Br. Peace*

A warrant directed by the Just. of peace to the Constable, or other sworne officer, and to a stranger, who is no officer, and the warrant is made *conjunctem & divisum*, and is delivered to the strange, who executeth it, all this is good.

A warrant directed by the Just. of peace to two men joyntly, to arrest another, &c. yet any one of them alone may doe it. *Crompt. 147.*

A warrant directed by the Justice of peace to the Sheriffe, hee may by word command his under-sheriffe, bailiffe, or other sworne or knowne officer to serve it, without any precept by writing.

And so the Seriffes servant, or other person, by the Sheriffes commandement, and as servant to the Sheriffe, may serve or execute such warrant, without any precept by writing. See *Br. Faux Imprif. 43. & Trespasse 339. Lamb. 91.*

But otherwise if the Sheriffe will command another man (that is a stranger) to serve it, he must deliver him a precept in writing, otherwise a writ of false imprisonment will lye for the arrest.

A warrant directed by the Justice of peace to the Sheriffes bailiffe, or to the Constable, or to the Justices servant, or to an estranger, to arrest one, &c. such person (to whom that warrant is made) must serve it himselfe ; for these can command none other to doe it, neither by word nor writing, nor make any deputy. *8. F. 4. 14. 14. H. 7. 9. 20. H. 7. 13. 21. H. 7. 34. Co. 9. 69.*

The officer to whom any warrant shall be directed and delivered, ought with The effi- ces. dury.

with all speed and secrecie, to seeke and find out the partie, and then to execute his said warrant.

A sworne and knowne officer (be he Sherife, under-sheriffe, bailife, or constable, &c.) needs not to shew his warrant to a man, when hee commeth to serve it upon him, althouh hee demandeth it : But if the Just. will direct his warrant to his servant, or to another (who is no sworne officer) to serve it, they must shew their warrant to the party, if he demand it, or otherwise the party may make resistance, and needs not to obey it. *Br. Faux. 7mp. 23.*

Co. 6 54.

Co. 9 68.

Co. 9. 69.

But a sworn and known officer, if he wil not shew his warrant to the party, yet he ought (upon the arrest) to declare the contents of his warrant, &c.

And an officer giveth sufficient notice what he is, when he saith to the party, I arrest you in the Kings Name, &c. And in such case the party at his perill ought to obey him, though he knoweth him not to be an officer ; and if he have no lawfull warrant, the party grieved may have his action of false imprisonment against him.

Dyer 244.

F. 67. 248.

Lamb 93.

If an officer do arrest a man for the peace, or the like, before that he hath any warrant, and then afterwarde doth procure a warrant (or a warrant cometh after to him) to arrest the party for the same cause, yet the first arrest was wrongfull, and the officer is subject to an action of false imprisonment. See the statute 43. *El. cap. 6.*

Where there be two or three knowne by the name of *I. S. of D. Y* comen, and upon a warrant (or other processe) granted out against one of them, another of them is arrested, an action of false imprisonment will not ly against the officer for this ; for the officer is not to bound at his perill, to take notice which of them is the offender, &c. And perhaps no particular offence is mentioned in the warrant, *Tamen vide L. 5. E. 4. fo. 51. Co. 84. pro. Co. contra, Co. 11. H. 4. fo. 90. contra ideo quere.*

Where a warrant is granted out against *I. N.* the son of *W. N.* and the officer thereupon arresteth *I. N.* the son of *T. N.* although in truth he be the same person that offended, & against whom the complaint was made, yet this arrest is tortious, and the officer subject to an action of false imprisonment. See the like matter, 10. *E. 4. fol. 12. Br. Fx. imp. 38.*

The officer, upon any warrant from a Justice of peace, for the peace, or good behaviour, or in any other case where the King is a partie, may by force breake open a mans house, to arrest the offender, &c. See hereof *antea*, in the former title, *Forcible Entry, cap. 78.*

See Crom.

214 a. Co.

148.

If an officer, or other person, hath arrested a man by vertue of his warrant, which he hath from a Just. of peace, and then taketh his promise that he wil come again to him such a day to goe to the Just. with him according to his warrant (and so letteth the party goe) who comes not again at the day



day appointed, it seemeth the officer cannot after arrest or take him againe by force of his former warrant, for that this was by the consent of the officer: But if the party arrested had escaped (of his own wrong) without the consent of the officer, now upon fresh suit the officer may take him again & again so often as he escapeth, although he were out of view, or that he shall flie into another towne or county. See more, *postea*, tit. *Imprisonment*, & L. 5. *2. 4. f. 12. Br. Fx. imp. 18.*

Where an officer hath received a warrant, he is bound to pursue the effect of his warrant in every behalfe, or otherwise his warrant will not excuse him of that which he hath done. See *antea*, tit. *Surety for the peace*, ca. 69.

If an officer, having a lawfull Warrant to arrest another, shalbe resisted, or assaulted by the party, or by any other person, then may that officer justify the beating or hurting of such persons; and others (upon his prayer) may and ought to aide the officer. *21. H. 7. 39.*

If a Justice of peace shall make any warrant for a matter wherein he hath jurisdiction although it be beyond his authority, yet it is not disputable by the Constable, or other such officer, but must be obeyed and executed by the officer; as if the Justice of peace shall make his warrant to arrest one for the peace or good behaviour, &c. without cause; the officer shall not be punished for executing this: But if a Just. of peace shall make his warrant to doe a thing out of his jurisdiction, or in a cause whereof the Justice of peace is no judge, if the officer shall execute such a warrant, here he is punishable; for the officer is not bound to obey him, who is not judge of the cause, no more than a meere stranger: and so note that the officer is bound to take notice of the authoritie and jurisdiction of the Judge. See such a matter 22. *Ass. 64. Plo. 394. b. Cro. 106.* *14 H 8 16. Br Fx. imp. 8 Lamb. 67. 94 Co. 10. 76. Cromp. 174.*

If any man shall abuse the Justice of peace his warrant. as by casting of it into the dirt, or treading it under his feet, &c. it seemeth he may be bound to his good behaviour therefore, and may also be indicted and fined therefore, for it is the Kings proesse. *Cromp. 149.*

When any person commeth before a Justice of peace, by force of any warrant for the peace, good behaviour, or for a riot, or the like, the partie must offer sureties, or else the Justice may commit him. See *antea* tit *Surety for the peace.*

If a Justice of peace shall grant his warrant to one to apprehend another for murder, robbery, or felony, it shall be safe for the Just. upon the delivery of his said Warrant, to take (upon oath) the examination of the said party that requireth the Warrant, or at least, to bind him over by recog. to give evidence at the next gaole delivery, &c. against the offender, lest that afterwards when the offender shall be brought (by the officer) before the

Justice upon his said warrant, or else happen to yeeld himselfe to the said Justice then the party that procured the Warrant be gone: for by credible report I am informed, that one having procured a Warrant from a Justice of peace in Suff. against another for a robbery done upon the high-way, and the Justice upon the delivery of his Warrant, not having bound over the complainant to give evidence, nor taken his examination, as aforesaid, that at the next assises and Gaole delivery, the party charged with the robbery, came and offered himselfe to the said Justice of Peace, who immediately acquainted Sir *Thomas Flemming* (then Lord Chiefe Justice and Judge of Assise there) with the whole matter, but the said Iudge much blamed the said Iustice of peace for not having bound over the said complainant at the first when he granted him the Warrant, and charged the said Iustice of peace at his perill, presently to send for the party complainant, to come to giue evidence, &c. And further directed the said Iustice of peace presently to bind over the party charged, with good sureties for his attendance and appearance.

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*Arrest, and Imprisonment.* CAP. II 8.

What.

**A**N Arrest is the apprehending and first restraining of a mans person, depriving it of his own will and liberty, and may be called the beginning of Imprisonment.

Imprisonment is where a man is arrested against his will, or is restrained of his libertie, by putting him into the gaole, cage, or stocks, or into some house, or otherwise by keeping him in the high street, or open field, so as he cannot freely goe at libertie when and whither he would.

If the Constable, or other officer, (upon a warrant received from a Iustice of peace) shall come unto the party, and require, or charge, or command him to goe or come before the Iustice, &c. this is no arrest or imprisonment: and upon a Warrant for the peace, the officer ought first to require the party to goe before the Iustice, before he may arrest him. See hereof *antea tit. Surety for the peace.*

But this arrest (being in execution of the commandement of some court, or of some officer of Iustice) is expressed in their Writs, Precepts or warrants, by these words, or the like, *sc. Capias, Attachias, &c.* to attach, arrest, take, bring, or convey, or cause to be attached, arrested, &c. all which words doe imply the taking and laying hold of the person.

What persons.

To this arrest all lay persons (under the degree of Barons, or Peeres of the Realme) be subject, and that by warrant from the Iustices of peace, as you may see here before, *tit. Surety for the peace, cap. 68.*

But

But the Iustices of peace are not to grant their Warrants for the peace, or the like, against any Nobleman : and yet if a *Capias* or attachment shall be awarded against a Baron or Peere of the realme, from the Kings Iustices at *Westm.* for a contempt, or in case of debt or trespassse, the officer without any offence of law may execute the same, for that the officer is not to dispute the authoritie of the Court.

Ecclesiasticall persons also may be arrested, and that by a Warrant from the Iustices of Peace in some cases. See hercof, *tit. Surety for the peace, r<sup>st</sup> 1. cap. 68.*

A woman covert may bee imprisoned by the Iust. of peace, for a force or a riot committed by her. See *antea tit. Forcible Entry, and Riots. cap. 77.*

But otherwise of Infants, in such cases ( as it seemeth ) see *ibid.*

Yet if an Infant cannot find sureties for the peace, being demanded against him, he shall be committed untill he hath found sureties. See *antea, cap. 68.*

An Infant (though of yeeres of discretion, yet he ) shall suffer no imprisonment, nor other corporall paine, for any offence committed or done by him against any statute, except that an infant be expressed by name in the statute. *Br. Imprif. 101. Covert 68. Pl<sup>o</sup>. 364. Doct. & Stud. 147, 148.*

The liberty of a man is a thing specially favoured by the Common law For what of this Land ; and therefore if any of the Kings Subjects shall imprison cause, and ; another without sufficient warrant of him, or his law, the party grieved by whom, may have his action, and shall recover dammages against the other ; and Co. 9. 56. the King also shall have a fine of him : for imprisonment of another without offence of the law, is one of the Kings royall prerogatives, and only annexed to the Crowne.

Also by the statute of *Magna Charta*, made 9. H. 3. c. 29. no freeman *P. Accuser.* shall be taken or imprisoned, &c. but by the lawfull judgement of his equals, *1. 5. E. 3. c. 9.* ( *sc.* upon his conviction ( for some offence ) by the verdict of a Jurie of twelve good and lawfull men ) or by the law of the Realme. See *the Petition An. 3. Caroli Regis.*

† And by the statute of *Magna Charta* every arrest or imprisonment, and *Co. 10. 74.* every oppression against the law of the Land, is forbidden ; and if any Judge, Officer, or other person, against the law, shall usurpe any jurisdiction, and by colour thereof, shall arrest, imprison, or oppress any man, it is punishable by this statute. See *Co. 10. 75.*

Note, that all jurisdiction ought to be either by Charter, or by Prescription. *Co. 11. 99.*

Also by the statutes of 25. Ed. 3. cap. 4. 28. E. 3. cap. 3. & 42. E. 3. cap. 3. no person shall be taken or imprisoned, nor put to answer, unlesse it be by



indictment or presentment (of a Jury) before Justices, or by matter of Record, or by due processe made by writ originall at the common law. See *P. Accusation* 1. & 42. *Aff.* 5. And *Br. Faux impris.* 30. 2. *H.* 4. the body of a man shall not be taken but by processe out of a Court of Record.

A Commission to arrest or take a man (and his goods) was holden to bee against Law, for that this ought to be either upon indictment, or suit of the partie, or other due processe of Law, *Br. Commiss.* 15. 16. & *Faux impris.* 9. & *Indictment* 38. 42. *Aff.* 5. 12. 24. 2. 3. 9. *Co.* 5. 64.

And so note, that no man shall be arrested for debt, detinue, trespassse, or other cause of action, but only by vertue of a Precept or commandement out of some Court of Record.

Neither shall any man commit another to prison, except he be a Judge of Record. *Co.* 10. 103.

See *Co.* 3. 11. But yet for misdemeanors done against the Kings peace, (as for Treason, felonie, or breaking of the peace, &c.) the offenders as well by the Common Law, as by divers statutes, may be arrested and imprisoned, by the officers of Justice, and sometimes by private persons, (as here-under followeth) without either Presentment, Processe, Precept, Warrant, or other commandement. And these being by the Law of the Realme, are warranted by the aforesaid stat. of *Magna Charta*.

By a private man.

And *M. Bracton lib.* 5. in fine, saith thus, *In criminalibus causis ubi sequi debet capitale Judicium, vita, viz. vel mutilatio membrorum, non sequitur Attachamentum aliquod, sed corpus talis (quicumque fuerit ille) ab omnibus arrestetur, qui sunt ad fidem Domini Regis, sive inde Preceptum habuerit, sive non habuerit.*

And yet you must observe, that for the arresting of the body of a man in such cases, there must be some just cause, or some lawfull and just suspicion at the least: And therefore where a man is indicted of felonie, that is a good cause for any man to arrest him. But if an appeale of felony be commenced against another, that is no sufficient cause, for it is but a private suspicion, &c.

*1c. E.* 4. 17.

Also every private man may arrest another, whom he knoweth or seeth to have committed a robberie, manslaughter, or other felonie, and may deliver him to the Constable of the Towne where such an offender is apprehended; or in the Constables absence may imprison and set him in the stocks; and if there be no stocks there, it seemeth he may carry the offender to the next Towne, and deliver him to the constable there: See *9. Ed.* 4. 28. or else he may carry him before a Justice of peace, by him to be examined, and sent to the gaole, there to abide, untill the next assises, or Sessions of the peace, &c.

*Fitz Bar.*  
101.

Also

Also when a felony is committed, every man may arrest suspicious persons that be of evill fame, &c. and if such person shall make resistance, the other may justifie to beat him.

But for the arresting of such suspicious persons, note, that there must bee some felony committed indeed.

Also the party that shall arrest such suspected person, must have a suspicion of him himselfe, and for the same felony, or otherwise suspicion generally is no cause to arrest another. See *antea tit. Examination.* 5 H. 7. 4. & *lib. Intra. tit. fx. impris. div. 5.* 9. Ed 4. 28.

So that when any felony is done, every man that shall suspect another to be guilty thereof, may arrest him, See 5. H. 7. 4. b. Br. *Faux impris.* 16.

Any man suspecting another of a felony committed, or onely intended, may arrest him, so as thereupon he commits him to the Gaole, or carries him before a Justice of peace. 9 E. 4. 26. 20 E. 4. 6. Vide Finch 127. & *hic cap. 113.*

Also when a felony is committed, the common voyce and fame that I. S. did the felony, is sufficient cause for any man to suspect him, and to arrest him, *ibid.*

Also, Huy and cry after I. S. for felony, seemeth to be sufficient cause to arrest him, though there be no felony committed, *ibid.*

Also, Huy and cry is sufficient cause to arrest any suspicious person, Br. *fx. impris.* 25.

So when a felony is done, to be in company of the offenders, is sufficient cause to arrest him. 9 Ed 4. 28. *Nedham.*

So to live idly and vagrant. Br. *fx. imp.* 22. See *antea.*

29 E. 3. 39.  
5. H. 7. 4.

Also every man may arrest such as apparently goe about to commit any felony, and may imprison them. Finch 127.

Also, upon huy and cry for stolne goods (*sc.* for a horse, or bullocks, &c. of such a colour, &c.) if A. be taken driving or leading, &c. such a horse, or such a bullocke, or having such other stolne goods about him, though he be a man of good name and credit, yet every man may apprehend and stay A. hereupon, and may deliver him to the Constables, by them to be set in the stocks, or safely kept, untill they can carry him before a Justice of peace, that so he may be delivered by course of Law.

If any man shall be dangerously hurt in an affray. (or otherwise) every man may arrest and imprison the offender, &c. What every private man may further doe in an affray: see before, *tit. Affray.* 10. H. 7. 19.

Unlawfull hunters in Parks, the Keepers or their servants, may for such offence justifie to arrest the offenders, and to cause them to depart, &c. *Lib. intrat. tit. fx. Imprisonment div. 12.*

Every

Every man knowing of any that keepeth, or useth any gun, &c. contrary to the statute, may arrest them, and bring them to the next Justice of peace, &c. see *antea tit. Guns.*

co. 9. 63 b.

Nightwalkers, being strangers, or suspected persons, Watchmen may arrest them, and may stay them till the morning, &c. see hereof *tit. Watch, antea.* Yea, every man may arrest such Nightwalkers, for it is for the good of the common wealth. 4. H. 7. 18. Br. Faux imprisonment 15. see the stat. of VVinch. 13. E. 1. & 4. H. 7. fol. 2. & 5. H. 7. fol. 5. a.

But in all these cases before, where a private man shall arrest another, he ought thereupon to commit the prisoner to the gaole, or to carrie and deliver him to the Constable, or to some other officer, &c. see 20. E. 4. 6. Finch 127.

By officers

The Sherife, Bailifes, Constables, and other the Kings Officers may arrest and imprison offenders, in all cases where a private person may, and without any writ or warrant.

Where a constable may arrest one, &c. see hereof, *antea, tit. Conservators of peace, Affray, Forcible Entrie, & Examination.*

A Constable being informed of a lewd man and woman that are together in incontineny, may take with him so many of his neighbours as he will; to arrest the said man and woman to finde sureties for their good behaviour, 1. H. 7. 13. H. 7. 10. *hic Cap. 75.*

If a man makes an assault upon the Constable, he may justifie to arrest him that makes the assault, and to carrie him to the gaole for the breach of the peace, although the Constable be the party upon whom the assault was made, 5. H. 7. 6. Br. fx. imp. 41.

The Justice of peace may arrest and imprison offenders in all cases where a private person may. See *Hic cap. 8.*

The Justice of peace (upon his owne motion and discretion, or upon complaint) may also grant out his warrant, for the arresting (or convening before him) of all such persons, as shall breake, or goe about to breake the peace, or as hee shall suspect to be inclined to breake the peace, and may commit them to prison, if they shall refuse to finde, or cannot find sureties for to keepe the peace.

The Justice of peace (in divers cases) may in like sort grant out his warrant for the good behaviour, against offenders (as you may see before *cap. 75.*) and may commit them to prison for not finding sureties accordingly.

And these things the Justice of peace may doe by force of the commission, and of the statutes, 18. Ed. 3. c. 2. & 34. Ed. 3. c. 1.

If one commeth before the Justice of peace, upon his warrant for the peace, good behaviour, or for a Riot, or the like, the Justice needeth not  
to



to demand suretie of him, but may commit him, if he doe not offer it. *Br. Peace 7.*

Also the Justices of peace upon their owne view, &c. of the offence, may imprison the offenders against divers penall lawes; as namely, such as keep common Alehouses without licence; offenders for unlawfull games, ryoters, such as shall make any forcible Entries, or holdings of possessions, &c. see for these before under their particular titles.

There be divers other offences, which by the statutes are committed to the Justices of peace (out of their Sessions) to heare and determine; And of which the offenders shall be convicted, sometimes upon their owne confession before the Justices, and sometimes upon examination and prooffe of witnesses; In all which cases the said Just. of P. may convent the said offenders before them (by their proces or warrant) and after such examination and conviction, they may imprison, or otherwise punish the offenders, according as they are limited by the said statutes. See before *Hic cap. 66.*

[Wheresoever the Justice of peace hath power, or authoritie given him by any statute to bind over any man, or to cause a man to doe any thing, if such person being in his presence) shall refuse to be bound, or to doe such thing, it seemeth such Justice may send such person to the gaole, there to remain till he shall performe the same. See hereof *antea tit. Recognisance.*

In what cases the Kings officer may breake open a mans house, for to arrest an offender. See hereof *tit. Forcible Emrie. cap. 78.*

All men being required, ought to assist the Kings officers, to pursue, and arrest offenders against the peace, &c.

If the partie against whom any lawfull Warrant is granted, shall make resistance, or shall make an assault upon the officer, or shall fly; the officer may justifie the beating and hurting of him, and may also imprison him in the stocks for the same: But if the partie resisteth or flyeth, before hee be arrested, the officer cannot justifie the beating of him. *2. Ed. 4. 7. a. Br. Tresp. 296. 3.*

If the Warrant were to arrest or take one that standeth indited of felonie, then may the officer justifie the killing of such a person, if he shall resist, or flie, or that he cannot be otherwise taken. See *hic antea, Homicide tolerated.*

None shall be imprisoned by any Justice of peace, but only in the common gaole, by the statute of *5. H. 4. & 23 H. 8. cap. 2.*

And therefore Justices of peace cannot commit felons to any of the Counters in *London*, nor to other prisons which be no common Gaols; nor make a gaole of their owne houses.

And yet Justices of peace may commit to the stockes some offenders against.

H h h

Imprisonment  
5. H. 4. Tot.  
P. Prison 2.  
The Place.  
co. 9. 119 b.

Resist.

2 E. 4. 6.

21 H. 7. 39.

against certaine penall statutes, As townsmen tipling in Alehouses, &c. See hercof *ante tit. Alehouses.*

Persons refusing to work in hay & harvest time. See *antea, tit. Labourers.*

And in some case the Justice may commit an offender to safe custodie by his discretion. *Vide antea, tit. Preachers.*

Also in some cases the Justice may send offenders to the house of Correction, and there to be continued for any reasonable time, at the discretion of the Justice. See *antea tit. Rogues, & his cap. 125. fine.*

*I amb 136.  
Crom. 169.*

The Sheriffe or gaoler may imprison a felon, or other prisoner in their owne house, or in the common gaole at their pleasure. *Tamen quare, & vide Cromp. 184.* that the gaole is the Kings prison, and that for causes touching the King, offenders shall be sent thither.

*2. Ed 46.  
22. Ed. 4 35  
3. H. 4. 9.*

The Constable (or other such officer) cannot imprison any man in his house, (as it seemeth) but in the stocks, and that not above such a reasonable time, as he may provide convenient aid safely to convey the Prisoner to the Justice, or gaole. *Finch.*

And yet in case of an Affray, &c. the Constable may for a time imprison the offender, being a man of quality, in the Constables owne house, or may commit him to some other safe custody. *Vide hic cap. 1.*

If a man commit felony in one County, and be arrested for the same in another Countie, hee shall bee imprisoned in that County, where he is taken. *Vide antea, tit. Felonie, & 11 E. 4. fol. 4. Br. Fx. impr. 25.*

*23. E. 4. 8.*

The Justice of peace, Constable, or other officer pursuing a felon into another County, takes him there; the felon shall bee committed to the gaole of the county where he was taken: for the Just. of peace or officer being out of his county, hath no more authoritie than a private man. *Vide antea, tit. Accessories & Felony, Br. fresh suit. 3. & Plo. 37. a.*

Also if the Constable (or other officer) shall see an affray, and he coming to arrest them, the affrayors doe flie into another County, the officer (as every other private person) may pursue them into the other County, and may stay or arrest them there; but the officer cannot bring them out of that County, but must carrie the affrayors before some Just. of peace of the same County where they were taken, &c. But if the affray be in one towne and the affrayors doe flie into another towne, or into a franchise or liberty within the same county, the officer may pursue them, and take them out of the franchise &c. by fresh suit. *Vide antea, tit. affray.*

*See 1. E. 4. 6.  
Br. Tyl 296*

But if the Constable hath arrested one upon a warrant from a Justice of peace, and after the arrest the party escapeth (of his owne wrong) & fleeth into another county the Constable may pursue and take him in the other county by fresh suit, and bring him before the Justice of peace upon whose warrant

warrant he was first arrested, as is seemeth. See *Crom.* 172. 173. & *antea*, *tit. Felony by statute.*

If a prisoner taken in execution shall make an escape of his owne wrong, and shall flie out of sight, and into another County where the Sheriffe hath no power, yet the Sheriffe, &c. upon fresh suit, may take him againe in any other county, and he shall be still said to be in execution; yea without fresh suit, the Sheriffe, &c. may take him againe, and keepe him untill he hath agreed with him: otherwise if the escape were by the consent of the Sheriffe, &c. *Co.* 3. 52. *Br. Escape* 4. 12.

Now for the conveying of prisoners to the gaole, it must be at the proper charge of the prisoners, if they have meanes or abilitie thereto; otherwise it must be at the charge of the towne where they are taken. 21. *Iac.* 28. & 3. *Caroli.* 4. 14. cap 10.  
P. Prison 7. 8

And if a man be arrested for felony, and the Constable shall carry him to the Gaole, and if the Gaoler will not receive him, the Constable must bring him backe to the towne where he was taken, and that towne shall be charged with the keeping of him untill the next Gaole deliverie. by the opinion of the Booke 10. *H.* 4. or the Constable or other party that arrested him, may in such case keepe the prisoner in his owne house, as it seemeth. See 11. *E.* 4. *Br. Faux Imprison* 25. *fine.* 10 H. 4. 7.  
F. Esc. 8.

But the Gaoler denying to receive a felon by the delivery of any Constable or towneship; or taking any thing for receiving such, shall be punished for the same by the Justices of gaole deliverie. P. Prison 6.  
4 Ed. 3 c. 10

When a statute doth appoint imprisonment, but limits no time when the offender shall be imprisoned. then he is to be imprisoned presently; as in case of a force, the Justices of peace upon view thereof, ought to commit the offenders presently; for after they may not commit them. The Time.  
co. 8. 119.  
Pla. 17. b.

Also when a statute doth appoint imprisonment. but limits no time how long, there the prisoner must remaine at the discretion of the Court. Crom. 171.

Where a statute doth ordaine. that an offender shall be imprisoned at the Kings pleasure. *Vide antea, tit. Bailement.*

Where a statute ordaineth that a prisoner shall not be delivered without the Kings speciall commandement, and that upon a fine to be made to the King; who may asseſſe the same fine, and deliver him: see 18. *H.* 8. 1.

But imprisonment to be inflicted by the Justice of P. almost in all cases (except for the Peace, the good behaviour, or for felony, or higher offences) is but to retaine the party untill he hath made fine to the King for his contempt or offence; and therefore if he shall offer to pay his fine, or shall find sureties by recog. to pay it, he ought to be delivered presently, 2. *Mar.* 1. Br. Imprison.  
100 co. 11.  
43.



The man-  
ner.

Co. 8 100. &  
9. 87.

Now for the manner of imprisonment, it seemeth generally in all cases where a man is committed to prison, especially if it be for felony, or upon an execution (or but for a trespassse, or other offence) every gaoler ought to keepe such his prisoner, *in salva & arcta custodia*; *Salva*, sc. that he ought to be imprisoned so surely, as that he cannot escape; *Arcta*, in respect that he ought to be kept, close, without conference with others, or intelligence of things abroad.

Co 3. 44.

And therefore if the gaoler shall licence his prisoner to goe abroad for a time, and then to come againe; or to goe abroad with a keeper, though he come againe, yet these are escapes: and if the prisoner were in for felony, this is fineable in the gaoler at the least, if it be not felony; and if the prisoner were in upon an execution, this is so penall to the officer, as that he shall be charged for the debt; and if the prisoner were in but for a trespassse, yet the officer is fineable: for imprisonment was ordained for a punishment of offenders, and in terror of all others, *ut pana ad paucos, metus ad omnes perveniat. Vide antea tit. Felony by statute. Cap. 106.*

1 R 2. c. 12.

2. H. 4 cap 4

And yet see Co. L. 260. That imprisonment must be *Custodia*, & non *pana*; for *Carcer ad homines custodiendos, non ad puniendos, dari debet*: But yet it seemeth meet and just, that it should be *pana*, aswell as *Custodia*, sc. for Malefactors, that it should be a punishment to them, and a terror to others; and for debtors, that they may the sooner pay or take order with their Creditors.

For, as one saith, *Maxima illecebra peccandi impunitatis spes*, A great impulsive cause of offence, is the hope to escape unpunished: And so a great cause that Debtors, care not to pay, nor to take order with their Creditors, is in their hope to escape imprisonment, or of too much favour and liberty in prison.

Dyer 249.

Co 3. 44.

Also (by the law) those which are in execution, ought not to goe at liberty within the prison, nor abroad with their keeper, 24. H. 8. much lesse in cases of felony, or of higher offences.

Co. ibid.

P. Accompt.

2.

Ritz 93. b.

Also by the statute of West. 2. ca. 11. Accomptants, and such as are in execution, the Sheriffe or Gaoler may put irons or fetters upon them: and yet if the gaoler shal imprison a man so straightly, by putting him in the stocks, or putting more irons upon him than is needfull, or keepeth his vidual from him, whereby the prisoner becommeth decrepit, lamed or otherwise diseased, he shall have an action of the Case against the Gaoler: and if the Gaoler shall keepe his prisoner more streight than of right he ought to doe, so that the prisoner dyeth thereof, this is felony in the gaoler. *Hic cap. 107. Verbo Gaoler.*

Also the Constable or other such officer that shall imprison in the stocks,

stocks, any offender, for felonie or suspition thereof, may locke the stocks, and if need be, may also put irons on him, as it seemeth; and when he conveyeth him to the gaole, or to the Justice, may pinion him, or otherwise make him sure, so that he cannot escape.

It seemeth by *Britton*, fol. 17. that by the common Law (before the statute of *West. 2.*) none should have irons put on them, but such offenders as were taken for felonie or trespassers in Parkes. But the words of the statute of *West. 2. cap. 11.* are generall, *quod Carceri mancipentur in ferris*, which word, *Carceri*, seemeth to signifie any person imprisoned for any cause, (or any persons worthy of the prison,) and is not to be restrained to Accomptants only. See *Cock. 3. 44.*

Also by the statute 7. *Jacobi Regis*, all Rogues, Vagabonds, sturdy beggers, and other idle and disorderly persons, sent to the house of correction, may (by the master of such house) be punished by putting fetters or gives upon them. 7. 14. 4.

*Posse Comitatus. CAP. 119.*

**V**Here the Just. of P. Sheriffe, or other officer, is enabled to take the power of the County, it seemeth, they may command, and ought to have the aid and attendance of all Knights, Gentlemen, Yeoman, Husbandmen, Labourers. Tradesmen, servants, and apprentices, and of all other such persons, being above the age of 15. yeares, and that are able to travell. Lamb. 309.

But women, Ecclesiasticall persons, and such as be decrepit or diseased of any continuall infirmitie, shall not be compelled to attend them.

And in such cases, it is referred to the discretion of the Justices of Peace (or Sheriffe, &c.) what number they will have to attend upon them, and how and after what manner they shall be armed, weaponed, or otherwise furnished.

But it is not justifiable for the Just. of P. Sheriffe, or other officer, to assemble *Posse Comitatus*, or raise a power or assembly of people (upon their owne heads) without just cause. *Vide antea, tit. Ryots.*

*What Persons may take Posse Comitatus, and in what cases.*

**A**ny Justice of peace, or Sheriffe, may take (of that County where he is a Justice or Sherife) any number that they shall thinke meet to pursue, apprehend, arrest and imprison traitors, murderers, robbers, and other felons, or such as doe breake; or goe about to breake, or

disturbe the Kings peace ; and every man ( being required ) ought to assist and aid them. *Vide antea, tit. Forcible Entry, and Felony.*

The Justices of peace (and the Sheriffe, or Under-sheriffe) may take *Posse Comitatus* for the suppressing of ryots, and all sorts of persons ( being able and required ) ought to assist them therein. *Vide antea, tit. Ryots.*

14 H. 7 8.

Yea, any one Justice of peace may take the power and aid of the County, to suppress ryoters ; and needs not to tarry for the coming of another Justice, or of the Sheriffe.

Also in cases of forcible Entry, any Justice of peace may take *Posse Comitatus* to remove such persons as by his view, or by inquisition taken before him, shall be found to have made any forcible Entry ( into other mens possessions ) or to detaine them with force. *Vide antea, tit. Forc. Entry.*

P. Recus. 52.

Also the Sheriffe, or other officer, upon any lawfull warrant, for the apprehending of any Popish Recusant &c. may take *Posse Comitatus*, &c. See the statute 3 Jac. cap. 4.

3. H. 7 1 10

C. 5 115.

P. Distr. 4.

P. Ret. w. 5

Br. Fin. p. 37.

Br. Riots 2, 3

The Sheriffe, Under-sheriffe, or Bailife, &c. ( if need be ) may by the Common Law, take the power of the Countie ( what number they shall thinke good ) to execute the Kings processe or writ, be it a Writ of execution, *Replevin, Estrepement, Capias*, or other Writ, it being the Kings commandement. ( See also the statute *West. 1. 17. 17, West. 3. 39.* )

And such as shall not assist them therein ( being required ) shall pay a fine to the King.

3 H. 7 1.

Br. Tres. 166

C. Rio. 51.

The Sheriffes Bailife, to execute a *Replevie*, took with him three hundred men armed (*modo guerino, sc.*) with Brigandines, Jacks, and guns, and it was holden lawfull : for the Sheriffes officer hath power to take assistance, as well as the Sheriffe himselfe, for that all is one office, and one authoritie.

A man demands the peace in the Chancerie against a great Lord, and hath a *Supplicavit* directed to the Sheriffe : there, if need shall be, the Sheriffe may take *Posse Comitatus* to aid him to arrest such a Lord &c. *Vide antea, tit. Suretie for the Peace.*

So it seemeth, if a *Supplicavit* be directed to a Just. of peace, the Justice of peace, or the officer to whom the Just. of peace shall make his Warrant in this behalfe ( upon resistance made ) may ( if need be ) take *Posse Comitatus* to aid him to arrest the partie : *Quia quando aliquid mandatur, mandatur & omne per quod pervenitur ad illud. Co. 5. 115.*

But every Sheriffe is inabled besides by his Writ of Assistance, whereby there is commandement ( under the great seale ) to all Archbishops, Dukes, Earles, Barons, and all other the Kings subjects within the same Countie, to be aiding to him in whatsoever belongeth to his office &c.

The Sheriffe may take *Posse Comitatus* to apprehend felons &c. or disturbers



disturbers of the peace. *Vide antea, tit. Forcible Entry.*

So he may take *Posse Comitatus*, to execute the precept of the Justice of peace. *ibid.*

The Constable (of a towne) upon a felony committed, or upon any affray, or the like, may take the aid of his neighbours or other persons being present, to apprehend the felons, or to cause the peace to be kept, and to carry the offenders before the Justice &c. See *Br. Riot. 3.* 3. H. 7. 10.  
13. H. 7. 10.  
Br. Trisf.  
431.

One hath hurt another, whereby he is in perill of death, the Constable may take power or aid to arrest him. &c. 38 E. 3. 8.

So may the Constable take the aid of his neighbours, for executing of the Justices Warrant directed to him.

Yea, all and every such persons as are conservators of the peace by the common Law, (*sc.* every pety constable, high Constable, Coroner, Sheriffe, Steward of a Leet, or of a Court of Pipowders, Steward of the Sheriffes Torne, and other Judge in any Court of Record) may command and take the meet helpe, aid, and force of others, to pacifie, and to arrest all such, who in their presence, and within their jurisdiction, shall goe about to breake the peace by deed or word.

Every man may assemble his friends and neighbours to defend his person &c. (being in his house) against violence, &c. but not to goe abroad with him to a Faire or market, &c. *Vide antea, tit. Forcible Entry.* Co. II. 81.  
II. H. 7. 39.

*Certaine Advices to the Justices of Peace.* CAP. 120.

**I** Thought it not amisse here shortly to admonish the Justices of peace againe, of some few things mentioned before, for their better memory.

1 First, that they exercise not the office of a Justice of peace, before they have taken the Oath of their office, and the oath of Supremacie. *Vide antea, c. p. 4.*

2 That they execute not this their office in their owne case but to cause the offender to be convented or carried before some other Justice, or to desire the aid of some other Justice being present; *quia iniquum est aliquem suum esse Iudicem* *Cok. 8. 118.* And some late statutes have taken speciall care to prevent this, as you may see *hic tit. Tresp. &c.*

Besides *idem non potest esse Agens & patiens.* 14. H. 8. 31. And when a man is a party, he cannot be a Judge indifferent. 8. H. 6. 19. *Auxi adestre si veni tuum, qui Justice de pace que ad execute ferra Office en son Case de-mesme, adestre pany pur ceo in Camera stellata.* *Cromp. 68.*

3 That they be carefull for the execution of the statute of Ryots. *Vide antea, tit. Ryots. C. p. 45.*

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P. Recus. 5. Also the Sheriffe, or other officer, upon any lawfull warrant, for the apprehending of any Popish Recusant. &c. may take *Posse Comitatus*, &c. See the statute 3 Jac. cap. 4.

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*Certaine Advices to the Justices of Peace. CAP. 120.*

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2 That they execute not this their office in their owne case but to cause the offender to be convented or carried before some other Justice, or to desire the aid of some other Justice being present; *quia iniquum est aliquem suum esse Iudicem* *Cok. 8. 118.* And some late statutes have taken speciall care to prevent this, as you may see *hic tit. Tresp. &c.* Crom. f. 68.  
Lit. 112.  
Co. l. 141.

Besides *idem non potest esse Agens & patiens.* 14. H. 8. 31. And when a man is a party, he cannot be a Judge indifferent. 8. H. 6. 19. *Auxi adestre si veni nem, que Justice de peace que ad execute serra Office en son Case de mesme, adestre pany pur ceo in. Camera stellata. Cromp. 68.*

3 That they be carefull for the execution of the statute of Ryots. *Vide antea, tit. Ryots. Cap. 45.*

If



If upon their inquirie of a Ryot the truth cannot be found, by reason of any maintenance,&c. that they certifie the same within one moneth. *Ibid.*

4 That upon a forcible Entry, they make no restitution, without Enquirie. *Vide antea tit. Forcible Entrie.*

5. That upon notice of any treason, or of any Seminaries,&c. or of any *Agnus Dei*,&c. offered, they discover the same to some of the privie Counsell. *Vide tit. Treason.*

6 That they bee circumspect in bailing of prisoners, *viz.* that they neither denie it to such as are baileable, nor yeeld it where it is not granta-ble. *Vide hic Bailement.*

7 If any felony be committed, and one is brought before the Justice of Peace upon suspicion for the same, though it shall appeare to the Justice that the prisoner is not guilty of that offence, or that it is not felonie of death, yet he may not let him at libertie, but so as he may come to his tri-all. *Vide antea tit. Felony by Statute, and Evidence against Felons.*

8 That all Recognisances taken by them, be in the Kings name.

9 That all recognisances taken by them, be certified at their next quarter Sessions, or gaole delivery, according as the case shall require.

10 That they meet at every Easter Sessions at the least, *Vide 5. El. cap. 4. P. Just. 67.* And yet their presence and attendance at every generall Sessions, is very requisite.

11 That their examinations taken concerning the misentring of Plaints in County courts; or the defaults of gathering the Shire Amerciaments, be certified into the Exchequer,&c. *Vide antea, tit. Sheriffes.*

12 That such offences as the Surveyours of Highways shall present to them, they againe present at their next quarter Sessions, *Vide antea, tit. Highways.*

13 That the oathes taken by them upon the submission of any Recusant, be certified at their next quarter Sessions. *Vide antea, tit. Recusants.*

14 Also that they doe justice, and give remedy to every party grieved, in any thing that lieth within their power, to heare, detennine, or execute, and that without respect of persons, and according to the lawes and statutes of this Realme: *Vide antea, cap. 4.*

Note, that all these former matters are penall to the Justices of P. if they shall offend in any of them, and therefore it is likely they will be the more carefull therein. But there are certaine other things principally tending to the publike good, and lately commended from his Majestie, (by the Judges of Assise) to the care of the Justices of peace; in all which the Justices of peace are to imploy also their speciall care and diligence; and they are shortly these ten articles following.

1 Alehouses; the abuses there to be reformed, and such as be unlicenced to be suppress'd.

2 Highwayes and bridges to be amended.

3 Hue and Cry, and fresh suit to be duly made, and pursued after robbers, and other Felons,

4 Labourers: *sc.* idle persons meete to serve, to be compelled to goe to service.

5 Poore; their children to be placed Apprentices; such as are able of body, to be holden or set to worke.

6 Recusants; first Popish Recusants (especially such as have beene reconciled to the Pope, or drawne to the Popish Religion, since the Gunpowder Treason, for these are by his Majestie accounted most dangerous) that these be certified into the Kings Bench, and further to be dealt withall (by the Justices of Peace) according to the severall statutes in that behalfe made.

Also negligent Recusants, who shall not resort every Sunday to Church; that such be punished according to the statute, for the first and best meanes to bring men to God, is to bring them to Church.

7 Rogues and Vagabonds, to be duly punished.

8 Houses of correction, to be maintained.

9 Watch to be duly kept.

10 Weights and measures, the abuses therein to be reformed.

Further, the Justices of peace are to be carefull that they suffer not the King to be disadvantaged, where it lyeth lawfully in their power to prevent it, *vide Lamb. 5 21.*

Also that they remember, how that they exercise not the judgements of men onely, but of God himselfe (whose power they doe participate, & who is alwayes present with them) and therefore must take heed that in all their actions they set God continually before their eyes.

But for as much as most of the businesse of the Just. of Peace (out of Sessions) consisteth in the execution of divers stat. committed to their charge, which stat. cannot be sufficiently abridged, but that they will be short of the substance and body thereof, therefore it shall be safest for the Justice of peace not to relie over much upon these short collections thereof, but to have an eye to the Abridgement of statutes, or rather to the booke of Statutes at large, and thereby to take their further and better directions for their whole proceedings: (for as Sir *Edw. Cooke* observeth) Abridgements are of good and necessary use to serve as Tables, but not to ground any opinion, much lesse to proceed judicially) upon them: *Ideo*, saith he, *satis est petere fontes quam sectari rivulos.* *Cok. 10, 1 17, b.*

And lastly, for the better encouragement of Justices of peace; Constables, and other officers (and of all others which in their aid, or assistance, or by their commandement shall do any thing touching his or their office) who (by cautel:se suits comenenced by contentious persons amongst them for execu ing their offic:s) have lately been discouraged from doing their offices (with that courage, care and diligence, which is required at their hands) now for their ease in pleading they are by the stat. 7 & 21 Iacobi, allowed to plead the generall issue of Not guilty, and to give the speciall matter in evidence, and for their wrongfull vexation, double costs. And for all Actions, &c. to be brought against any Justice of peace, or other officer, (or other person which in their aide, &c. shall doe any thing concerning their office) the said Action, &c. shall be layed within the County where the fact shall be done, and not elsewhere, &c. 21. Iac. Reg. cap. 12.

7 la cap 5.  
21 la. ca 12  
3 Caro c. 1

*Et nota quicquid Iustic. fecerit de Recordo ignoranter, & pro defectu scientia, non erit pro eo punitus. Nec pro reperiisum facta judicialiter. 2 R. 3. fol. 10. Mz. les Iustices d' Assise poient oyer & punier les defaults de Iustices de Peace, sc. leur contempts, omissions, negligences, favours, affections, corruptions, & autres defaults quacunque.*

Warrants, and Presidents. CAP. 121.

**T**He Warrants of the Justices of peace may bee styled & made after divers manners, As

1 First, in the name of the King, and yet the *Teste* may be under the name of the Justice (or Justices) of Peace, that grant them out.

2 Or they may be filed and made onely in the names of the Justices.

3 Or they may be made without any such style and onely under the *Teste* of the Just. of Peace, or onely subscribed by the Justice as followeth.

*In the Kings Majesties name.*

Cantab.  
The Style.

**C**HARLES by the grace of God, &c. To our Sherife of our County of Cambridge, the High Constables of the Hundred of Radfield, the pety Constables of the Towne of Balsam, and to all & singular our Bailifes, and other ministers in the said County, as well within liberties as without, Greeting. For as much as A. B. of, &c. hath come before Sir Edward Peyton, Knight and Baronet, one of our Justices of peace within the said County, and hath, &c. (concluding it in the Justices name, as thus) Witnesse the said Edward Peyton, at Isleham, the

The *Teste*.

day of

&c.

Note:



Note, that wherefoever the Warrant is made in the Kingsname; (as before) there it seemeth the Warrant ought to be directed to all Ministers, as well within liberties as without; for that the King is made a party: and so it may be done in all other warrants (especially for felony, or for the peace, or the good behaviour, &c.) Because it is the service of the King, and no liberty or franchise shall be allowed, or hold place against the King. *Br. Franch.* 31. Yet see before, that the Justices of peace of the County may not intermeddle in any City, Towne, or liberty, which have their proper Justices. *Hic cap. 6.*

*Or thus, in the name of the Justice himselfe.*

**M**yles Sandys, Knight and Baronet, one of the Justices of the peace of our Sovereigne Lord the King within the said County; to the Sherife of the said County, to the Bailife, or Constables of the Hundred of, &c. to the petty Constables of the Towne of F. within the said Hundred, and to all other the faithfull Ministers and Officers of our Sovereigne Lord within the said County, and to every of them, Greeting. Forasmuch as, &c. Given under my hand and scale, at the day of &c.

*Cantab.*

Or they may be directed to any of these Officers (above named) particularly, or else to any other indifferent person, or persons, as followeth.

*Christopherus Hatton, Miles & Baronettus, unus Custodius pacis Dom. Regis in Com. Cantabr. Vic. ejusdem, salutem. Vel ballivi itineranti ejusdem Com. salutem: vel ballivo Hundredi de R. & Ch. in Com. pradi salutem vel B. C. & D. E. constabul' Hundredi de W. salutem: vel Constab. (generally) Hundredi or ville de H. salutem vel F. G. & H. I. Constabul', ville de H. & eorum cujuslibet salutem: vel sic, Dilectis Abi K. L. & M. N. & eorum cui-libet conjunctim & divisim salutem: &c.*

*A Warrant for the Peace.*

**C**HARLES by the grace of God, &c. to our Sherife, &c. For as much as A. B. of, &c. Yeoman, hath personally come before Sir Iohn Carleton Barronet, one of our Justices of the peace within the said County; and hath taken a corporall oath, that he is afraid that one C. D. of in the said County, Yeoman, will \* beat (wound, maim, or kill him, or burne his houses;) and hath therewithall prayed Surety of the peace against the said C. D. therefore we command and charge you joyntly and severally, that (immediately upon the receipt hereof) you cause the said C. D. to come before the said Sir Iohn Carleton, or some other of our Justices of the same county, to finde sufficient surety and mainprise, as well for his appearance at the next Quarter Sessions of our peace to be holden at the Castle of Cambridge, or elsewhere, for, or in

*Any one of these causes is sufficient*

the said County; as also for our peace to be kept towards us, & all our liege people, and chiefly towards the said A. B. that is to say, that he the said C. D. shall not doe, nor by any meanes procure or cause to be done, any of the said evils, to any of our said people, and especially to the said A. B. And if the said C. D. shall refuse thus to doe, that then immediately (without expeding of any further warrant) you him safely convey, or cause him to be conveyed safely to our next prison in the said Countie, there to remain untill he shall willingly doe the same: so that he may be before our said Justices at the said next generall Sessions of peace to be holden at Cambridge aforesaid, then and there to answer unto us for his contempt in this behalfe.) And see that you certifie your doings in the Premises to our said Justices at the said Sessions, bringing then thither this precept with you. Witness: the said John Carleton, at aforesaid, the fourth day of August, &c.

*Or thus, in the name of the Justice himselfe, Mutatis mutandis.*

Can'abr.  
For the  
peace.

**O** Liver Cromewell, Knight, one of the Justices of the Peace of our Sovereigne Lord the King, within the said Countie to the Sheriff, &c. Greeting. Forasmuch as A. B. &c. hath personally come before me, and hath taken a corporall oath, &c. *ut supra*. These shall bee therefore on the behalfe, and in the name of our said Sovereigne Lord, to command you joyntly, &c. that you cause the said C. to come before mee, or some other of his Majesties said Justices of Peace, in the said Countie, &c. *ut supra*. Given under my seale at aforesaid, &c.

*Or thus.*

**O** Liv. Cromewell, Miles. unus Custod pacis Dom Regis in Com' Cant. Vicecom' &c. salutem, Quia A. B. coram me sacrament' prestitit Corporale, Quod ipse metuit sibi dampnum de corpore suo per I. S. de facile posse veniri: Or thus: Quod ipse de vita sua, &c. per I. S. graviter, & manifeste comminat existit.

*Or thus: Quod ipse metuit de vita sua (sive de mutilatione membrorum suorum, sive de incendiis domorum suarum) per Jo. S. &c. Ideo ex parte dom' Regis vobis & cuilibet vestram mando, Quod attachiat' præd. I. S. per corpus suum) Ita quod eum tam cito quam captus fuerit personaliter ducatis coram me vel uno sociorum meorum custod' pacis Domini Regis ad inveniend' sufficient' securitat' de pace gerend' erga Dominum Regem, & cunctum populum suum & præcipue erga præd' A. B. viz. quod ipse dampnum vel malum aliquod præd' A. B. aut alicui alio de populo domino Regis de corporibus suis, mutilatione membrorum suorum, necnon de incendio duorum suarum non faciat, nec fieri procurabit quovismodo: & si hoc coram te recusaverit. tunc*

*ip'mm*

ipsum I. S. usque ad prox. gaolam domini Regis infra dict' Com' duci fac' ipsum ibidem sub arcta custodia moratur' usq; ad proximam Sessionem ipsius domini Regis de pace in Com' praed' tenendam, & hoc nullatenus omittas, sub poena incumben' & tu ipse sis ibidem, & habeas hoc mandatum. Dat' apud, &c.

Or thus.

I. C. miles, unus Just' domini Regis de pace in Com' Cantabr' conservand' assign' vic', &c. salutem, Ex parte dom' Regis vobis & cuilibet vestrum mand' quod attachiat' seu unus vestrum attachiat I. S. de, &c. Ita quod habeatis seu unus vestrum habeat corpus ejus coram me, vel uno sociorum meorum, &c. ad inveniendam sufficientem securitatem pacis, quod ipse non fac' nec fieri procurabit quovismodo aliquod dampnum corporale alicui de populo domini Regis, nec de incendio domo. um suarum, & praecipue erga A. B. qui de vita & mutilatione membrorum suorum, nec non de incendio domorum suarum per praed' I. S. graviter & manifeste cominat' existit prout mihi sacrar' prestitit corporal' & si hoc recusaverit, tunc eum gaolam domini Regis de Com' praed' duci faciatis seu unus vestrum duci faciet ibidem moratur' quousque hoc gratis facere voluerit. Et qualiter hoc mandatum fuerit executum mihi & sociis meis (custodes pacis Com' praed') ad proximam sessionem pacis in Com' praed' tenend' certific', & habeas ibid' tunc hoc preceptum, Sigillo meo sigillat' datum, &c.

Alias.

A. B. unus Justic', &c. ex parte domini Regis tibi mando, quod non omittas propter aliquam libertatem Com' praedict' quin attachias I. S. de, &c. & eum salvo custodire fac' ita quod habeas corpus ejus ad proximam sessionem pacis in Com' praed' tenend' ad inveniend' tunc & ibidem sufficientem securitatem de pace erga dictum dominum Regem & cunctum populum suum, & praecipue erga N. S. &c. ut antea.

Another for the Peace.

To the Constables of, &c. and to either of them.

**F**Orasmuch as B. A. the wife of W. A. of your said town, laborer, hath required surety of the peace against T. B. of your said town Barber, and withal hath taken her corporal oath before me, that she required the same not for any private malice, hatred, or evil will, but simply that shee is afraid of her life, or the hurting or maiming of her body, or the burning of her houses; these are therefore to will and require you, and in his Majesties name to charge and command you, that immediately upon the sight hereof, you, or one of you, \* require the said T. B. to come \* See before me, or some other of the Kings Majesties Justices within the said County, to find sufficient Sureties, as well for his appearance at the general Quarter Sessions of Peace to be holden for this County, as also that



that the said T.B. shal in the meane time keep the Kings Majesties peace, as well towards his said Majestie, as towards all his liege people, and especially towards the said B.A. And if he shall refuse so doe, that then immediately you doe convey the said T.B. or cause him to be conveyed unto the Kings Majesties gaole at the Castle of Cambridge, there to remain untill he shall willingly doe the same. And see that you certify your doings in the premisses to the Just at the said Sessions, and have you there this warrant. Dated at, &c.

*Or thus.*

**F**Orasmuch as B. the wife of W.A. of your said Town, hath personally come before me (I.C. Knight one of the Kings Majesties Justices of the P. for the said County of C.) and hath taken her corporall oath, That one T.B. of your said Town hath already assaulted, beaten, and bruised her the said B. and further hath threatned her in such sort that she is afraid that the said T.B. will beat, wound, maim, or kill her, or do her some other bodily harme; and thereupon shee the said B. hath prayed security of the P. to be had or granted her, against the said T.B. These are therefore to wil and require you (&c. *ut supra*) to finde sufficient sureties (or to bee bound with two sufficient sureties) for his personall appearance at the next general quarter Sessions of the peace to be holden for this County, then and there to answer the premisses, and in the mean time that hee the said T. B. keepe the peace towards our said Sovereigne Lord the King, and all his liege people, and especially against the said B. And if hee shall refuse thus to doe, that then, (&c. *ut supra*.)

*A Warrant for the peace upon a Supplicavit.*

*Canabr.*

**C**hrisstopher Hatton Knight, one of the Justices of the P. of our Sovereigne Lord the Kings Majestie within the County of Cambridge, to the Sheriffe of the said Countie, the High Constables of the Hundred of R. the petie Constables of the towne of B. and to all and singular the Kings Majesties Baliffes, and other Ministers, as will within Liberties as without in the said Countie, and to every of them, Greeting, Know ye, that I have received the Commandement (or writ) of our said Sovereigne Lord (in these words reciting the whole writ of *Supplicavit*: or onely reciting the effect of the *Supplicavit*) thus to compell A.B. of, &c. to finde sufficient sureties for his Majesties peace, by him to be kept, towards, &c.) and therefore on the behalfe of our said Sovereigne Lord, I command and charge you, joyntly and severally, that immediately upon the receipt hereof, you cause the said A.B. to come before me at my house in Chevely, to finde sufficient surety and mainprise for the peace. to bee kept towards our said Sovereigne Lord, and all his liege people, & especially

ally towards the said C.D. and if the said A.B. shall refuse thus to do, that then you him safely convey, or cause to be safely conveyed, to his Majesties gaole at the Castle of Cambridge (or to the next gaole of his Majesty in the said County) there to remaine untill that he shall willingly doe the same, so that he may be before the Just. of the P. of our said Sovereign L. within the said countie, at the next general Sessions of the peace to be holden for the said countie, there to answer to our said Sovereign Lord for his contempt in this behalfe. And see that you certify your doings in the premisles, to the said Justice at the said sessions, bringing then thither this precept with you. Yeven at the said place, the fourth day of, &c.

The Returne of this Writ, and Certificat of the Justices doings herein : see here before in the title of *Surety for the Peace*, cap. 73.

*A warrant for the good behaviour.*

**F**Orasmuch as A. B. of your said town is not of good name or fame, nor of honest conversation (but an evill doer, a Rioter, barretter, and perturber of the peace of our said sovereign Lord) as we are given to understand by the complaint of sundry credible persons. Therefore on the behalfe of our said Sovereign Lord we command you, and every of you, that immediately, &c. you cause the said A. B. to come before us, or some other of our fellow Justices, to finde sufficient surety and mainprise, as wel for his good abearing towards our said Sovereign Lord and all his liege people, untill the next quarter Sessions of the peace to be holden in the said County, as also for his appearance then and there. And if he shall refuse so to doe, that then, &c. (as in the warrant for the peace.)

*Or thus.*

**F**Orasmuch as we have beene credibly informed that S. W. of your Towne, &c. is a man of evill behaviour, one that daily moveth discord, strife, and dissention among his neighbours, and a common perturber of his Majesties peace : These are therefore in the Kings Majesties name to command you, &c.

*Another warrant for the good behaviour.*

**J**ohannes Peyton Miles, & Johannes Cutts Miles, Justiciarii Domini Cantab. Regis nunc ad pacem in Comitatu pradi conservand assignat; vic' Com' pradi, Nec non omnibus & singulis Ballivis, Constabular', ceterisque dicti Domini Regis ministris, tam infra libertates quam extra, in eodem Com' salutem. Quia dat' est nobis intelligi per relationem & Testimonium multorum fide dignorum Com' pradi quod A. B. do C. in Com' pradi gener', & R. A. de eodem Teoman, non sunt bonor' nominis & fame, nec conversationis honeste, sed mala dispositionis, barratores, & pacis dicti domini Regis perturbatores.

*Cantab.*

*Any one*

*of these is*

*sufficient,*

*or any o-*

*ther like*

*cause :*

*whereof*

*see hic*

*cap. 75.*

*Cantab.*

*\*Sum male*

*fame & ma-*

*lignatus, is*

*suffi ien dia.*

*Intri: 385.*

*baratores*

batores, ita quod verisimilis sit maridrum, homicidium, lites, discordias, & alia gravamina, & damna inter legios dicti dom' Regis, de corporibus suis, prae-textu premissorum indies oriri: Ideo ex parte dicti Dom' regis vobis & cuilibet vestrum precipimus, quod non omni' propter aliquam libertatem in Com' predict' quin attachiat', seu unus vestrum attachiat prafatos A. B. & R. A. Ita qd' habeat' eos coram nobis seu aliis sociorum nostrorum Iusticiar' dicti Domini Regis ad pacem, &c. quam cito capi possunt (vel coram Iusticiar' dicti Dom' Regis ad pacem in com' praed' conservand', ad proximam generalem sessionem pacis in eodem com' tenenda) ad inveniend' tunc coram nobis (vel dictis Iusticiariis) sufficient' securitas' de se bene gerend' erga dict' Dom. Regem, & cunctum populum suum, juxta formam statuti inde edit' & provis. sub certa poena eis per nos (vel per prafat' Iusticiar') tunc imponenda, Et hoc nullatenus omittatis periculo incumbente. Et habeas coram nobis, vel dictis Iusticiar' apud Sessiones praedictas hoc Praeceptum. Testibus nobis praedictis I. P. & I. C. ultimo die Iunii, anno regni domini nostri Caroli Dei grat' Anglia, &c.

*A generall Warrant for misdemeanor.*

Cam'.

**J**ohn Cutts Knight, one of the Justices, &c. to the Constables of, &c. and to either of them, These are to will and require you, and in his Majesties name straitly to charge and command you, and either of you, that immediately upon the sight hereof (or upon Munday next by eight of the clock in the forenoon) you bring I. H. of your said town, Butcher, before me, to answer to such matters of misdemeanor as on his Majesties behalfe shall be objected against him. And hereof faile you not at your perill. Dated at Childerley, &c.

*Another for misdemeanor.*

C'mbr.

**T**hese are to will and require you, &c. That immediately upon the sight or receipt hereof you attach the bodies of A. B. and C. D. &c: (or of all and every the persons hereunder named) and to bring them forth with before me, to answer unto such matters of misdemeanor as on his Majesties behalfe shall be objected against them. And hereof fail you not at your perils. Dated, &c.

*To attach one for felony.*

Cantab.

**F**orasmuch as complaint hath bin made unto me by C. D. that of late he hath had certain goods feloniously taken from him, that he hath in suspicion one R. C. of your said Town: These are therefore to will and require you, &c. presently upon the receipt hereof, to attach the body of the said R. C. and thereupon to bring him before mee to answer to the premisses. And hereof fail you not at your perils.

*Ano-*



Another.

**T**Hese are to will and require you, &c. presently upon the receipt *Cambr.* hereof, to attach the body of A. B. and to bring him before mee, to answer unto such matters of suspicion of Felony as on his Majesties behalf shall be objected against him. And hereof faile you not at your perils. Dated, &c.

Another.

**T**Hese are to will and require you, &c. to attach, &c. to answer unto the felonious taking of certain goods, wherewith he is charged by I. S. And thereof fail you not.

Another.

**J**Ohan. Millescent Miles, unus iust; &c. Const. vil. de B. & W. & cor cuilibet conjunctim & divis. salut. Ex parte Dom. Reg. vobis & cuilibet vestr. mando, quod attachiatis per corpus, seu unius vestrum attachiat. I. H. de W. hosteler suspect. sive defamat. de felon., ita quod eum habeat. seu unius vestrum coram me habeat die Luna prox. futuro, sub periculo incumbente. Datum, &c.

Another.

**R**ichardus St-George Miles, unus cust. pacis, &c. Ballivo Hundred. de R. in Com. prad. salutem. Ex parte dicti domini Regis tibi mando quod attach. N. B. de D. in com. prad. laborer, graviter suspect. de felon. per ipsum fact. (ut dicitur) & eum proxim. Gaule dicti dom. Regis absque aliqua manucapt. committas. ibid. morat. quousque secundum legem regni Anglia delibetur. Et hoc non omittas periculo incumbente. Datum, &c.

To search for stolen goods.

**VV**Hereas complaint hath been made unto me, by N. O. that of late he hath had feloniously taken from him certain goods, and that he hath in suspicion divers lewd and evill disposed persons within your Parish, these are to will, &c. that immediately upon the receipt hereof you make diligent search in all and every such suspected houses, and places within your Parish, as you and this complainant shall think convenient; and if upon your said search you find any of the said goods, or other just cause of suspicion, that then you bring all such suspected persons as you shall so finde, before mee, to answer unto the premisses. And hereof fail you not, &c.

Another.

**VV**Hereas complaint hath bin made unto mee Robert Haston *Cambr.* Knight, one of his Majesties Justices, &c. by I. S. of &c. that upon Munday at night last he had feloniously taken from him certain goods, [they would be named] and that he is given to understand,

K k k

that

that there be divers parcels of such goods in the hands or houses of certain suspected persons within your Town, These are to will, &c. that you be aiding to, and assist the said I. S. (the bearer hereof) with your best endeavours, whereby he may the better come to the sight and view of the same goods; that so he may the better judge or know whether the said goods, or any part of them, are his; and if he shall find the same goods, or any of them that were stolne from him, or that hee shall challenge or claime any of the said goods in the possession of any of the said suspected persons, that then you doe presently attach the bodies of all such suspected persons within whose custody, house, or possession, you or hee the said I. S. shall so finde the same, and them (together with the said goods) forthwith to bring before me, or some other of his Majesties Justices of Peace for this County, to make answer thereto. And hereof fail you not, &c. Dated, &c.

*To bind men to give in Evidence.*

*cantabr.*

**T**Hese are in the Kings Majesties name to charge and command you, &c. That presently upon the sight hereof, you, or some of you, doe cause to come before me, (or some other of his Majesties Justices of Peace of this County) the persons here undernamed, to the end that they and every of them may be bound to make their personall appearance at the next generall Gaol delivery (or Quarter Sessions) to be holden for this County, then and there to testifie their and every of their knowledges, concerning certain felonious acts committed by one A. B. now a prisoner in the Castle of C. And hereof fail you not, &c.

*A Warrant for a search after a Robbery committed, directed to the High Constables.*

**VV**Hereas there have bin many Robberies lately committed about, &c. Now for the better finding out of the same lewd Persons, we whose names are hereunder written, being his Majesties Justices of Peace (for the County of *Cambridge*) have thought good, and do hereby will and require you in his Majesties Name, That forthwith you direct your Precepts to every petty Constable within your (severall) Hundreds (commanding them) to make search in all Innes, Alehouses, and other suspected houses within your Precincts, for all such persons as are masterlesse, or out of service; as also for all idle, vagrant, or wandering Rogues, Beggars, or other persons; and further, that they the said petty Constables within their Precincts, do take examination and account of all those, and such other persons, as be common Alehouse-haunters, or which expend their mony in riot, or which doe not labour for their living, and have not whereon so to maintain them: And that the same searches be holden all over in your Hundreds in one night, and at such other severall times.

times as to your discretion shall seem meet: and if any such persons shall be found in the same searches, and that upon your or the petty Constables examination taken of them, or any of them, there shall be found any cause of suspicion in them, or any of them, that then they bring the same persons so suspected before us, or some one of us, or some other of his Majesties Just. of the Peace of this County, to be further examined in the said causes, and to be further dealt withall according to Law and Justice. And for the better doing hereof, we require you to command in his Majesties Name, That every petty Constable within their Precinct do require (and charge) two chief discreet Headboroughs in every Parish, to assist them the petty Constables in this service. And hereof fail you not, &c.

*A Huy and Cry after Robbers, &c.*

To all Constables, and other his Majesties Officers, as well within the County of *Cambridge*, as elsewhere within the Realme of *England*.

**W**Hereas complaint hath bin made unto me Vicechancellor of the University of *Cambridge*, one of his Majesties Just. of Peace within the said County of *Cambridge* by I. S. of &c. Husbandman, That upon Tuesday at night last (being the day of this instant November) he was robbed of certaine linnen taken out of his house, with some \* other things, and that he hath manifest cause of suspicion of one A. B. a lewd Regue, (here describe his personage and apparell) These are in his Majesties Name to require you, and every of you, to make search within your severall Precincts for the said A. B. and also to make Huy and Cry after him from Town to Town, and from County to County, and that as well by horsmen as footmen. And if you shall finde him the said A. B. that then you carry him before some one of his Majesties Justices of Peace within the County where he shall be taken, by him to be dealt withall according to law, &c.

\* They would be named.

*A Warrant for one who hath dangerously hurt another.*

**F**Oras much as I am credibly informed that I. B. of your Town, Blacksmith, hath now lately dangerously hurt one T. G. of your said Town Husbandman, by a blow which hee hath given the said T. on the face, and another on the backe, so as the said T. is in danger of death thereby: These are therefore in the Kings Majesties Name straitly to charge and command you, that immediately upon the sight hereof, you, or one of you, do bring the said I. B. before me, or some other of his Majesties Justices of the Peace of this County, to find sufficient Sureties, as well for his appearance before the Kings Majesties Justices, at the next generall Gaol delivery to be holden for this County, then and there to answer unto

Constable.



the premises, and to do and receive therefore that which by the Court shall be enjoined him : As also that he the said I. B. shall in the mean time keep the Kings Majesties peace towards his said Majesty, and all his liege people, and especially towards the said T. G. And hereof faile you not at your perils. Dated, &c.

*For the reputed father of a Bastard child.*

*Canabr.*

**V** Hereas complaint hath bin made unto me H. B. Serjeant at Law, one of his Majesties Justices, &c. by K. I. of your said Towne, single woman, that shee is (gotten) with child by one T. S. also of your said Town Butcher : These are therefore to will and require you, and in his Majesties Name to charge and command you, and either of you, that presently upon the receipt hereof, you attach the body of the said T. S. and thereupon to bring him before me (or some other of his Majesties Justices of the Peace for this County) to find sufficient Sureties, as wel for his appearance at the next generall Sessions of the Peace to be holden for this County, as also for his good behaviour towards his Majesty, and all his liege people in the mean time. And hereof fail you not, as you wil answer the contrary at your perils. Dated, &c.

*An Order for a Bastard child.*

The Order of Sir I. M. Knight, and M. D. Esquire, two of his Majesties Justices of Peace of the County of C. made for the relief of the Parish of W. in the said County, for the keeping of B. a bastard child begotten by T. S. of, &c. on the body of K. I. &c.

**I**n *primis*, upon the Examination of the said K. duely by us taken, we do find that the said T. S. is charged to have had (divers times) bodily and carnall knowledge of her (between such times). and to be the only father of the said bastard child, &c. and therefore wee doe order and adjudge him to be the reputed father of the said child.

We do further order as followeth, First, that the said K. shall keep her said child untill it come to 8 years of age.

Secondly, that the said T. S. upon notice of this our Order, shall, after such notice, pay into the hands of one of the Overseers of the poor of W. (for the time being) after the rate of 00 every weeke, to be paid monethly every yeare, towards the reliefe of the said child, untill it comes to 8 years of age.

Thirdly, that after the said child shall come to 8, &c. that the said T. S. pay to the Overseers, &c. 5 *li.* towards the putting out of the same child to be an Apprentice, &c.

Fourthly, that the said T. S. presently give good security to one of the Overseers &c. to perform this our Order.

*Where*

*Where a Maid servant is gotten with child, and from thence  
sent to her place of birth.*

**F**Orasmuch as I. M. for the space of                      yeares now last past, hath dwelt in the Parish of W. (in the County of E.) and being there settled in service with                      of W. aforesaid, was gotten with child; and being so with child, is now sent or conveyed to your Town of B. under colour that she was there born, to the burthening of your said Town, and contrary to Law: These are in his Majesties Name to charge and command you safely to convey the said I. to W. aforesaid, there to be set on work, or otherwise to be provided for according to the Law, and that you deliver and leave, or offer to leave the said I. to and with some one of the Churchwardens or Overseers for the poore of the Parish of W. aforesaid. And hereof fail you not, &c.

Note that such Maid servant cannot be sent from the place where shee is (or last was) in service, to the place of her birth, but must set her self to labour where she last dwelt, or served, being able of body: or being impotent, she is to be relieved by the Town where she last dwelt, or served. See *hic antea, tit. Poore.*

*A Warrant for Over-seers to give up their Account.*

To the High Constables of the Hundred of, &c.

**T**Hese are in the Kings Majesties name to charge and command you *Carab.* forthwith to give warning to the Church-wardens, and other the Overseers of the poore of every Parish within your Hundred, that they do personally appear before us at *Newmarket* at the signe of the Greyhound there, upon Tuesday the                      of                      next comming, by nine of the clock in the forenoon of the same day, to yield up, and to make a true and perfect account in writing, subscribed with their names or marks, of all such sums of money as they have received, or rated and ceassed and not received, for and towards the relief of the poore of their severall Parishes, and also of such stock (to set their poore on worke) as is in their hands, or in the hands of any their said poore to worke, and of all \* other things concerning their *\* See what they be in the t't's Poore.* said office; and hereof that they faile not at their and every of their perils. And further we require you, that you give warning to the petty Constables of every Town within your said hundred, that they or one of them be also then and there present before us, to informe and certifie us of the names of such other persons as are meet and fitting to be Overseers of the poore within their severall Townes, for this yeere next ensuing. And hereof faile you not, &c.

And this Warrant must be under the hands and seals of two Justices at the least, the one of the *Quorum. Vide tit. Poore.*

*A Warrant to new Overseers to take their charge.*

**B**Y vertue of the Statute made in the three and fortieth yeer of the Reigne of our late Sovereign Lady Queen *Elizabeth*, (intituled An Act for the relief of the poor) These are to will and require you, whose names are hereunder written, that you, together with the Church-wardens of your Parish for the time being; do (according to the same Statute) take order from time to time, for this yeer to come, for the setting to worke of the Poore within your Parish, and for the raising of a convenient stock of some Ware, or Stuff, in your Town, to that purpose; and for the providing of necessary relief for such as be lame and impotent amongst you; and for the placing, as Apprentices such children whose parents are not able to maintain them. And hereof see that you fail not at your perils. Dated under the hands and seals of us *Sam. Collins*, and *Thomas Comber*, Doctors of Divinity, and two of his Majesties Justices of the Peace within the said County of *Cambridge*.

This Warrant must be under the hands and seals of two Justices. *Vide antea, tit. Poore.*

*A Warrant to distrain such as refuse to pay their Rates for the Poore.*

To the Church-wardens, and other the Overseers for the Poor within the Parish of *W.* and to every of them.

*Contab.*

**F**Orasmuch as wee are credibly informed that the persons hereunder named, do refuse to contribute or pay the sums of mony hereunder mentidned, (upon their heads) being assessed and rated upon them severally, for and towards the necessary relief of the poore of your said Town, according to the form of the Statute in that behalf lately provided: These are therefore in his Majesties name to charge and command you, and every of you, forthwith to levy all and every the said severall sums of mony unpaid, and all the arrerages thereof, of all and every the said persons so refusing, by distress, and sale of the offenders goods, you rendring to the parties the overplus that shall remain upon the sale of the said goods; And this shall be your sufficient warrant therein. Dated, &c. *Vide antea, tit. Poore.*

*Another.*

To the Churchwardens, &c.

*Contab.*

**T**Hese are in his Majesties Name to charge and command you and every of you, presently to demand of all and every the persons hereunder named, all and every the severall sums of mony hereunder severally written, or set upon their heads, being assessed and rated upon them for and towards the necessary relief of the poor of your said Town, according to the form of the Statute in that behalfe lately provided: And if they or any of them shall refuse to pay the said severall sums of mony so rated upon them,  
That



That then presently you levy the same by distresse and sale of the offenders goods, rendring to the parties the overplus that shall remain upon the sale of their said goods. And this shall be your sufficient warrant therein. Dated, &c.

These two last Warrants must also be under the hands and seals of two Justices, &c.

*A Warrant for a generall search for Rogues.*

To the High-Constable of the Hundred of, &c.

**T**Hese are in the Kings Majesties Name to charge and command you, *Cantabr.* that you, together with the petty Constables of the severall Towns, Parishes, and Hamlets within your Hundred, (taking sufficient assistance out of the said Towns) do make a generall privy search within every of the said severall Towns, Parishes, and Hamlets upon | at night next coming, for the finding out and apprehending of all Rogues, Vagabonds, and wandring and idle persons, in or about your said severall Towns, Parishes, or Hamlets; and that such as shall be found and apprehended, you do cause them to be brought before us the next day unto L. by nine of the clock, there to be by us \* dealt withall according to the late Statute in that behalf provided. At which time and place we further require you, together with the said petty Constables to appear before us, and there to give an account <sup>What the Justice shall doe with them, see.</sup> and reckoning upon oath, in writing, and under the hands of the Minister of every severall Parish within your Hundred, what Rogues, Vagabonds, <sup>infra.</sup> wandring and disordered persons have bin there apprehended as well in the same search, as also since the last assemb'y and meeting that was made for this purpose being upon or about the day of last past. And hereof fail you not, &c.

Note, that all Rogues which shall be brought before the Justices upon such search (after examination of their idle life, taken by the Justices) are <sup>\* See the title of Rogues.</sup> either to be whipped by the Constables of the Town, where the Justices sit (as it seemeth:) or else from thence are to be sent to the house of correction, and to be conveyed thither by the Constables that brought them, and yet at the charge of the Hundred; which services imposed upon the Constables, are some cause of their neglect of this service; and therefore I have set down another course and president perhaps no lesse serviceable, which also may be performed and done every moneth, or every meeting of the Justices if need shall so require: or if the Justices cannot, or shall not meet, yet it seemeth, such Warrant may be granted out by any one Justice of Peace as followeth.

These are in the Kings Majesties Name to charge and command you, *Cantabr.* that you, together with the petty Constables of the severall Towns, Parishes, and

and Hamlets within your Hundred (taking sufficient assistance out of the said Townes) doe make a generall privy search within every of the said Townes, Parishes, and Hamlets, upon at night next comming, for the finding out, and apprehending of all Rogues, Vagabonds, and wandering and idle persons, in or about your said severall Towns, and that such as shall be found and apprehended, you doe cause them to be punished in every severall Town or Parish where they shall be so apprehended by the petty Constables of every severall Parish respectively; and by them also further to be conveyed according to the Statute. And if any of the said Rogues shall appear to be dangerous or incorrigible, that then you cause such to be brought before me, or any other of his Majesties Justices of Peace of this Division, to be further dealt withall according to the Statute in such cases provided. Dated, &c.

Afterwards any one of these Justices may take the Examination of, or proof against such dangerous Rogue, and finding cause, may then joyn with any other Justice of peace of that limit, being of the *Quorum*, and commit such rogue to the house of correction, or gaole, although the said two Justices shall not meet together about it.

A Warrant for a fugitive servant.

Cantab.

Wist. 172.

**H**enricus Smith *sacra theologia Doctor, unus Iust' Dom' Regis, &c. Balivus hundred' de B. & T. H. Constab, de M. in com' praed' salut' Quia E. L. retentus in servit' I. T. de M. praed' sibi serviend' (secundum formam & effect' statuti de servientibus edit' ) a servitio praed' J. T. sine causa rationabili, & licem' ipsius J. T. recessu (ut dicitur) Ideo ex parte dom' regis vobis & cuilibet vestrum praecepit, qd' praef. E. L. ad praefat' I. T. magistrum suum de serviend' deliberat' faciat, Et si hoc recusaver' tunc eum gaole Castri Cantabr' duci faciatis quousque, &c. Ita quod eum habeat' coram me, & sociis meis, Iustic' dicti domini Regis in Com' praed' ad prox' session' pacis, ibid. tenend' ad faciend' & recipiend' ea quae ei tunc & ibid. in hac parte obii-cientur. Sigill. meo sigillatc. Dat. apud.*

Another for the same, and to have the offender at the next Sessions.

Crom. 138.  
Cantab.

**T**homas Bambridge *sacra theologia Doctor, unus Iust, &c. vic' com' praed', Necnon I. B. Constabular' villa de B. & R. N. ballivo itiner' in eodem Com', & eorum cuilibet salut'. Ex parte dicti dom' Reg' vobis & cuilibet vestr' mando, qd' attach' seu unus vestr' attach' W. R. de B. praed' Laborer, ita qd' eum habeatis, seu unus vestrum habeat, coram me & sociis meis Iustic' dicti domini regis ad pacem in Com' praed' conservand', Necnon, &c. assign' ad proximi' generalem Sessionem pacis in Com' praed' tenend', ad respondend' tam dicto dom' Regi, quam R. C. de &c. Yeman, quare in servi-*

*tio ipsius R. apud T. in Com' prad' nuper retentus, ab eodem servitio ante finem termini inter eos concordat' sine causa rationabili & licet' ipsius R. recessis, in dicti domini Regis nunc contemptum, & ipsius R. grave dampni, & contra formam statuti inde nuper edit. et provis. Et habeatis. seu unus vestrum habeat, ibi tunc hoc preceptum, Teste, &c.*

*Another for a fugitive servant.*

**T**O the Sheriffe of, &c. Whereas I. E. being lawfully retained in service with N. A. of, &c. is departed from his said masters service before the end of his terme. without his masters leave or licence, (or without any reasonable cause) contrary to the Lawes and Statutes of this Realme in that behalfe provided: These are therefore in his Majesties name to command you, and every of you, that you, or some one of you, doe attach the body of the said I. E. \* and to bring him before mee (or some other of his Majesties Justices of peace, &c.) to find sufficient sureties, well and faithfully to serve his said master, according to the covenant betweene them made: and if he shall refuse thus to doe, that then you cause him to be conveyed safely to the kings Majesties gaole: &c. (as before in a warrant for the peace.) Given under the hand of me *Thomas Wilson* Doctor of Divinity, and one of his Majesties Justices of peace within the said County.

\* Or thus: That the said I. E. to his said Master to serve againe you doe cause to be delivered and if that to doe he shall refuse, that then you cause him to be conveyed to the Gaole, &c.

*A warrant for one refusing to serve.*

**M**ichael Dalton *Armig' unus magistr' Cur' Cantabrigie & unus Just' Cantabr. &c. R.L. Ballivo de S. in Com' prad' salut' Ex parte dicti Dom' reg' (10m. 238. tibi mando quod attachias R. A. de S. prad' Laborem, Ita quod eum habeas coram me vel sociis meis Just. dicti Dom' Regis ad pacem in com' prad' conservand', (Necnon ad diversa falonia, transgr' & alia malefacta in eodem com' audient' & term' assig') ad prox' general' sess. pacis in com' prad' tenend', ad respond' tam dicto dom. regi. quam B.C. de A. &c. Yeoman, quare ipse prad' R. A. licet in servitio congruo pro statu suo, per pref. B.C. fuit septus requisit' ei servire, ipsam tamen B.C. servire penitus recus. in contemp' dicti dom' regis & ipsius B.C. grave dampnum, & contra formam statuti de servitibus nuper edit' & provis. Et habeas ibi tunc hoc mandat'. Teste &c.*

And yet see the statute 5. *El. cap. 4.* whereby the departure of a servant; and refusing to serve, &c. are referred to two Justices of peace, by them to be first examined, and then the offenders to be committed, if they be faulty therein. See *antea tit. Labourers and Warrants.*

*For Alehouse-keepers to renew their recog.*

**I***ohn* St. George Esquire, one of the Kings Majesties Justices, &c. These are in the Kings Majesties name to require you, That you direct  
Th your



your precepts to every petie Constable within your Hundred, requiring them that they warne all Alehouse-keepers and Victuallers in their severall townes within your said Hundred, to be, and personally appeare before us at *Dynton*, upon Thursday, &c. and then thither bringing with them their former Licences: And further, that every of them bring with them a Certificate of their fittest and honest behaviour in keeping of their Alehouses and Victualling houses, under the hands of foure at the least, of the most substantiall, honest, and discreet Inhabitants of the Parishes where they so keepe or dwell. And hereof faile you not, &c.

*A Warrant for the suppressing of an Alehouse.*

**T** *Albot Pepis* and *Isaac Barrow* Esquires, two of the Kings Majesties Justices of Peace within the said Countie of *Cambridge*, to the Constables of B. and to either of them greeting. Whereas we are credibly informed that R. D. of your towne, Victualler, is himselfe a man of evill behaviour, and besides, doth suffer evill rule and disorder to be kept in his house, contrary to the Lawes and Statutes of this Realme: These are therefore in his Majesties name to will and command you forthwith to repaire to the house of the said R. D. and to charge him to surcease from keeping any longer any Alehouse or tipling house, and from common selling of Ale or Beere, at his perill: and withall that you cause his signe to be pulked downe; hereof faile you not, as you and either of you will answer to the contrary at your perill. Given under our hands and seales at B. the                      day of                      and in the yeare of our most gracious Sovereigne Lord *Charles*. &c.

*A Warrant to levie money forfeited by Alehouse haunTERS.*

*Iohn Gill* Esquire, one of the Kings Majesties Justices of the P. within the said Countie of *Camb.* to the Constables and Churchwardens of the Parish of W. and to every of them greeting.

*Cantabr.*

**E** Oras much as it hath beene duly proved before mee, according to the Stat. in that behalfe provided; that all and every the persons hereunder named; being Inhabitants within your Parish of W. upon the 12. day of this instant Moneth of *November*, have bin and continued drinking and tipling in the house of G. W. of your said town (Inne-keeper, or Alehouse-keeper) contrary to the forme of the same statute: These are therefore in his Majesties name to charge and command you, and every of you, forthwith to levie by distresse and sale of the goods of every the said persons hereunder named; the summe of three shillings and foure pence a peece, if they shall refuse or neglect forthwith to pay the same; (which severall forfeitures shall be bestowed and employed by you to the use of the poore of your said Parish) and that you render to every of the said offenders the overplus that shall remaine upon your sale of their said goods; and if the said offenders,

offenders, or any of them, shall refuse or neglect to pay their said severall forfeitures, and that you can find no sufficient distresse whereon to levie the same, that then you the Constables, or one of you, shall commit every such offender, or offenders (refusing or neglecting to pay the said summe or forfeiture, and not having sufficient whereon to be distrained for the same) to the stocks, there to remaine by the space of foure houres: and this shall be your sufficient warrant herein, Dated, &c.

But before the Just. of P. shall grant these two last warrants, he shall do well first to send for the offenders, and to examine them of the offence, &c.  
See *hic* cap. 7.

*A Warrant to convent all victuallers, &c. to put in sureties for observing Fish-dayes according to Proclamation.*

To the High-Constables of the hundred of Radfield,  
and to either of them.

**T**Hese are in the Kings Majesties name to command you to warn all the Inne-holders, Taverners, Cooks, Alehouse-keepers, Butchers, and other Victuallers whatsoever within your Hundred, personally to appeare before us at *Lynton* upon Thursday, being the twentieth day of this instant *Februarie*, at the signe of the Griffyn there; and to bring with them sureties that shall enter into bond with them, to his Majesties use, for the due observation of the orders lately published for the restraint of killing, dressing, and eating of flesh in Lent, or upon fish-dayes, according to his Majesties Proclamation in that behalfe, and that you, or one of you, be then and there with us, to deliver us a note in writing of the names, surnames, and dwelling places of every of them, and of all other that victuall without Licence within your Hundred, as you will answer the contrary at your perils. Dated at Westwratting the first day of February, &c.

*Against Alehouse-keepers.*

**A**Lso a warrant (like unto the last but one) may be made to levie the forfeiture of Inne-keepers, or Alehouse-keepers, for suffering townsmen or others to continue drinking in their house, or for selling lesse than one quart of their best Beere or Ale for 1. d. saving that the distresse taken of such Inn-keepers, and Alehouse-keepers, is not to be sold till after six dayes, and then, for default of satisfaction, the same are presently to be appraised and sold, and therefore such warrant must therein be made accordingly. See 1. *Inc. cap. 9. P. 7. 8.*

*To levie the forfeiture for not keeping the assise, &c.*

**T**Homas Tirrell Esquire, one of the Kings Majesties Justices, &c. Forasmuch as it hath been duely proved before me (according to the statute in such case provided) that G. W. of your said towne,

Alchouse-keeper, hath lately uttered or sold (in his house) lesse than one full Ale-quart of the best Beere for one pennie, contrary to the form of the same statute: These are therefore in his Majesties name to charge and command you forthwith to levie, by distresse of the goods of the said G. W. the sum of 20, s. the same to be bestowed and imployed by you to the use of the poore of your Parish; and if the said G. W. within six dayes next after such distresse by you taken, shall not pay the said xx. s. that then you cause the said distresse presently to bee prised and sold, and the over-plus that shall remaine upon your said sale of the said goods, that you render the same over-plus to the said G. W. and this shall be your sufficient warrant herein. Dated &c.

Before the Justice shall grant out these two last warrants, he shall do well also first to heare and examine the offenders.

A warrant for the removing of a petie Constable,  
and for the swearing of another.

Cantabr.

**C** Arolus Dei gra, &c. vicecom Cantabr, Nec non capitali Constabul-  
hundredi de R. & eorū cuilibet salut, Quia W. P. & R. S. sub constab-  
villa de C. & K. (certis de causis nos movent,) ab officio suo amoveri  
& exonerari fecimus; Ideo vobis & cuilibet vestrum conjunctim & divisim  
precipimus & mandamus, quod I. F. & R. M. ad omnia & singula eidem of-  
ficio incumbencia bene & fideliter exercenda & exequenda (prom ipsi nobis  
ide respondere voluerint) jurare faciatis: dictisq; W. P. & R. S. similiter in-  
jungentes, quod ipsi de dicto officio ulterius exercendo & exequendo nullatenus  
se intromittant, quousq; aliud de nobis habuerint mandatum: Et quicquid inde  
feceritis, Iusticiariis nostris ad pacem nostram in dicto com conservan assign  
ad prox general sessionem pacis apud C. in dicto com tenend, certificetis, Hoc  
praeceptum nostrum tunc & ibidem remittentes. Teste Roberto Lawrence  
Armig' uno Iustic' nostrorum predicti tali die, &c.

Lamb yy 3.

You shall find this former president in M. Lamb. But upon such warrant,  
quere who shall give the oath to the new Constableness whether the High  
Sheriffe, or High Constable that shall execute such warrant, or the Justice  
of peace that granted out such warrant.

For this authoritie of removing petie Constables, and of choosng and  
swearing new, is reputed properly to belong to the Leet, (it being one of  
the ancientest Courts in the Realine. Br. Leet. 14.) and if the newele be  
not present at the Leet to take his oath accordingly, then upon certificate  
or notice thereof to any Justice of peace of that Countie, the Justice doth  
use to send his warrant for the party so chosen, and to give them their oath.  
Vide hic cap. 16.

Also in default of the Leet, or otherwise, where there shall be just cause



to remove a petty Constable, for his insufficiencie, or for any misdemeanor, or other cause, every Iustice of peace, *ex officio*, (as it seemeth) may remove the old Constables, and may choose and sweare new: which also we see to be warranted by common experience. See *Lamb.* of the duties of Constables. pag. 19.

And I have seene some presidents to such purpose as followeth.

*To our loving friend A.B. of W. Yeoman.*

**T**Hese are in his Majesties name to charge and command you, to make Cantabr. your repaire unto us, or to some other Just. of peace of this Countie, to take the Oath of a Constable to serve his Majestie within the Towne of W. (\* according to the choyce made of you by the Jury at the last Leet holden in your towne.) And hereof faile you not. Dated under the hands of us *John Layer* and *Martin Pierce* Esquires, two of his Majesties Justices of peace, &c.

\* If they were not chosen at the Leet, this clause is to be left out.

*The forme of the Oath concerning the office of the Constable.*

**Y**OU shall sweare, that you shall well and truly serve our Sovereigne Lord the King in the office of a Constable: you shall see and cause his Majesties peace to be well and duly kept and preserved according to your power: you shall arrest all such persons as in your sight and presence shall ride or goe armed offensively, or shall commit or make any riot, affray, or other breach of his Majesties peace: you shall doe your best indeavour (upon complaint to you made) to apprehend all Felons, Barretters, and Rioters, or persons riotously assembled: And if any such offender shall make resistance, (with force) you shall levie Huy and Cry, and shall pursue them untill they be taken: you shall doe your best indeavour that the Watch in and about your towne be duely kept for the apprehending of Rogues, Vagabonds, night-walkers, Eve-droppers, Scouts, such as goe armed, and the like; and that Huy and Cries be duly raised and pursued, according to the statute of *Winchester*, against Murtherers, Theeves, and other Felons. And that the statutes made for the punishment of Rogues and Vagabonds, and such other idle persons, conuning within your bounds and limits, be duly put in execution: you shall have a watchfull eye to such persons as shall maintaine or keepe any common house or place where any unlawfull game is or shall be used; as also to such as shall frequent or use such places, or shall use or exercise any unlawfull games there, or elsewhere, contrary to the statutes. At your Assises, Sessions of the peace, or Leet, you shall present all and every the offences done, contrary to the statutes made (*1 Jacobi, 4. Jacobi, & 21. Jacobi Regis*) to restraine the inordinate hunting and tippling in Innes, Alehouses, and other Victualling houses, and for repressing of drunkenness: you shall there likewise true

presentment make of all blood-sheddings, affrayes, out-cries, rescous, and other offences committed or done against the Kings Majesties peace, within your limits: you shall once every yeare, during your office, present at the quarter sessions all Popish Reculants within your Parish, and their children above 9. and their servants, (*sc.* their monethly absence from the Church: ) 3. *Iac.* 4. and you shall have a care for the maintenance of Archerie according to the statute: you shall well and duly execute all precepts and warrants to you directed from the Justices of Peace of this County: and you shall well and duly according to your knowledge, power, and ability, doe and execute all other things belonging to the office of a Constable, so long as you shall continue in this office, So helpe you God.

This oath I have set downe the more largely, thereby to shew the principall matters whereof the Constables are chiefly to have care.

*The forme of a Superfedeas by a Justice of Peace. C A P. 122.*

**R**ichard Love Doctor of Divinitie, and Vice-Chancellor of the Vniversitie of Cambridge, one of the Justices of peace of our Sovereigne Lord the Kings Majestie, within the county of Cambridge, to the Sheriffe, Bailiffes, Constables, and other the faithfull Ministers of our Sovereigne Lord within the said Countie, and to every of them, sendeth greeting. Forasmuch as A. B. of &c. Yeoman, hath personally come before me at &c. and hath found sufficient suretie (that \* is to say, C. D. and E. F. &c. Yeomen; either of the which hath undertaken for the said A. B. under the paine of twentie pounds) and he the said A. B. hath undertaken for himselfe under the paine of fortie pounds, that he the said A. B. shall well and truly keepe the peace toward our Sovereigne Lord, and all his liege people, and especially towards G. H. of, &c. Yeoman, and also that he shall personally appeare before the Justices of the peace of our said Sovereigne Lord, at the next generall Sessions of the peace to be holden for this Countie of Cambridge: Therefore on the behalfe of our said Sovereigne Lord, I command you, and every of you, that you utterly forbear and surcease to arrest, take, imprison, or otherwise by any meanes (for the said occasion) to molest the said A. B. And if you have (for the said occasion, and none other) taken or imprisoned him, that then you doe cause him to be delivered, and set at libertie without further delay. Yeoven at Cambridge aforesaid, under my seale this last day of *Iuly* &c.

*Alias.*

**T**homas Gomber *sacra theologia doctor. &c. unus Iustic' domini Regis, &c. omnibus Ballivis & ministris domini Regis infra Com' præsidi-*

\* The Superfedeas is good though it name neither the sureties nor the Summe.

& eorum cuilibet salutem. Quia A. B. & C. D. coram me personaliter constitut' manuceper' pro I. S. sub pœna xl. li. quas concesser' & uterque eorum per se pro toto & in solid' concessit ad opus dicti domini Regis, levare, si dampnum vel malum aliquod W. T. eveniat de corpore suo, &c. per dictum I. S. vel per procur' suum quovismodo, vobis et cuilibet vestrum ex parte Domini Regis mando, quod captione corporis ejusdem I. S. quocunque modo censeatur prætenu alicujus precepti sive Warr' vobis seu alicui vestrum in hac parte direct' seu dirigend' supersedeatis et sine delatione deliberari fac'. Datum, &c.

Alias.

**H**enricus Bing Serviens ad Legem, unus Justic' domini Regis, &c. vic' ac omnibus et singulis ballivis, ministris et fidelibus dicti domini Regis in eodem Com' et eorum cuilibet salutem quia I. S. suffic' secur. de pace (et de bono gestu suo) erga dictum dom' Regem, et precipue erga W. T. coram me invenit. Ideo ex parte dicti domini Regis vobis et cuilibet vestrum mando et precipio firmiter injungens quod de ipso I. S. pro hujusmodi secur' pacis inveniend' cap' : sive arrestand' omnino supersed'. Et si ipsum I. S. ea occasione ceperitis sive imprisonaver' tunc eum deliberari fac' si ipsum ea occasione et non alia detineatur. Teste &c.

If the prisoner be in the gaole, see another forme *hic postea tit. Liberate.*

Note that such *Supersedeas* is good, though it name neither the sureties, nor the summes wherein they are bound ; but yet it is the better forme to expresse them both, for then if it shall appeare that the sureties are not sufficient men, or not abound in sufficient summes, better sureties may bee taken : And accordingly all the *Supersedeas* issuing out of the Chancery, Kings Bench, and Court of Common Pleas, doe rehearse the names of the sureties, and the summes ; and those things which the higher Court doe use, are the Rules and Orders for others to follow, &c. 2 H. 7. fol. 1. Fitz. *Supersed.* 4.

The forme of a *Supersedeas* ( by a Justice of peace ) upon a Writ of *Supplicavit* against an Infant.

**S**amuel Collins sacra theologia doctor, unus Justic' domini Regis nunc ad Cantabr. pacem in com. præd. conservand. assignat'. vicecom. ejusdem com', ac omnibus et singul' ballivis, constabular' cæterisq; dicti dom. Regis ministris, tam infra libertates, quam extra in com. præd' salutem : Sciatis quod breve dicti domini Regis recepti in hac verba, Carolus &c. ( reciting here all the Writ verbatim ) Et quia I. B. de &c. I. S. de, &c. Et prefat' C. A. coram me pref. Samuele Collins, personaliter comparuer', et prædict. I. B. et J. S. manuceper' pro dicto C. A. qui infra ætatem 21. annor' existit : viz. quilibet manucaptor. præd. in 20. li. quas recognover. se debere dict. domino Regi, ac concess. de terris et tenementis, bonis et catallis suis, ad opus dicti domini regis levand'



vand, viz. qd' prad' C. A. dampnum vel malum aliquod alicui de populo dicti dom. regis de corpore suo, vel de incendio domorum suarum non faciet nec fieri procurabit quovismodo: Ideo ex parte dicti domini Regis vobis & cuilibet vestrum mando, qd' de coartand' aut attachiand' dictum C. A. ad inveniendam aliquam securitatem pacis per ipsum gerend' erga dictum dom. reg. & cunctum popul. suum, seu alicui de eodem populo suo coram vobis, seu aliquo vestr. invenienda' supersed' fac' omnio. Et si ipsum C. A. occasione prad' & non alia ceperitis, seu capi mandaver', & in prisona ipsius dom. Regis, sub custodia vestra deteneritis tunc ipsum a prisona in qua detinetur sine dilatione alicui fac' seu unus vestr. deliberari fac'. Teste me prefat. Sam. Collins, 22. die Nov. anno regni dicti dom. Reg' &c.

*Alias.*

**H**ENRICUS SMITH sacrae theologiae doctor, &c. unus Just. domini Reg' &c. Vic' Com' prad'. Nec non omnibus constabulariis bal', ac aliis ministris dicti dom. Regis, & eorum cuilibet, salutem. Sciatis, quod mandat' (aut Breve) dom. Regis in hac verba recepi. Carolus Dei grat' &c. (reciting all the Writ) Et quia I. B. de, &c. & I. S. de &c. Et prad' T. C. coram me pref. H. S. personaliter com' & prad' I. B. & J. S. pro prad' T. C. manuceper' quilibet manucept' prad' sub poena xx. li. et prad' T. C. pro seipso assumpsit sub poena xl. li. de terris et catallis suis ad opus dicti dom. reg. levand' Ideo, &c. Quod prad' T. C. dampnum vel malum, &c. ut sup.

*A Superseadeas for the good behaviour.*

Crom. 237.

**N**Ote that upon good sureties taken, (for the good behaviour) a Superseadeas of the good behaviour may be granted, as for the P. mutatis mutandis.

Note also, that a Superseadeas de Capias indictatum de transgression', and so of an Exigent, may be granted by the Just. of P. out of Sessions: For otherwise it were mischievous for the party, as well by reason of his imprisonment, as also for that he may be outlawed before the Sessions, if the Just. of P. might not take sureties of him for his appearance; and all is but to appear to answer to the indictment.

Crom. 234.  
hic 275.

Li. Inv. 601.

Lamb. 508

& 33.

And M. Crompton is of opinion, that these may be granted by any one Ju. of P. with whom agreeth the book of Entries. But M. Lambert thinketh it not in the lawfull power of any one Just. of P. to grant such Superseadeas, at this day, but that it must be done by two Ju. at the least, and the one being of the Quorum: nevertheless, for that I find the old presidents to run in the name of one Justice of peace alone, I have drawne these accordingly; perswading notwithstanding the joyning of two Justices herein, and the one of the Quorum, if they may conveniently.

## A Superledeas de Capias indictatum de transgress.

**T**homas Bambridge sacre theologie doctor, unus Just. dom. Reg. nunc ad Cantabr. pacem in com. prad. conservand. Necnon ad divers. felon. trans. &c. in eod. com. audiend. & termin. assign. vic. com. prad. saluti. Quia C. D. de A. in com. tuo, Yeoman, venit coram me, & inven. suffici. manucaptors essendi coram Just. dict. dom. Regis ad pacem in com. prad. conservand. (Necnon ad diversa felon. &c. in dict. com. audiend. & terminand. assign.) ad generalem session. pacis apud C. in com. prad. prox. die tenenda, ad respond. dict. dom. reg. de quibusdam transgr. contemp. & offencis, unde indict. existit: Ideo ex parte dicti dom. regis tibi precipio qd. de capiend. pref. C. D. seu ipsum imprison. aut eum, ea ex causa aliqualit. molest. omnino supersed. & si eum, ea ex causa, & non alia ceperitis, tunc ipsum sine dilatione deliber. faciat. Teste me, &c.

Alias, quia invenit plegios pro fine.

**T**homas Wilson sacre theologie doctor unus Just. dict. dom. Reg. ad Cantabr. Crom. 234. pacem in com. prad. conservand. Necnon ad divers. fel. trans. & alia malefacta in eod. com. audiend. & terminand. assign. vic. com. prad. ac omnibus & singulis ballivis, constabul. ceterisque dicti dom. regis ministris, tam infra libertates quam extra in com. prad. salutem: Licet nuper per Breve (vel preceptum) dicti domini Regis vobis seu uni vestrum preceptum fuit quod caperitis seu unus vestrum caperet A. B. de S. in comitat. prad. Yeoman, si inventus fuerit in eodem, & ad ipsum salvo custod. Ita quod haberetis seu unus vestrum haberet corpus ejus coram custodibus pacis, ac Justiciari. dicti domini Regis ad pacem in com. prad. (Necnon ad diversa felonias, transgres. & alia malefacta in eodem comitat. audiend. & terminand. assignat) apud Cantabr. tali die ad respondend. dicto dom. Regi de contemp. & transgres. unde coram dictis Just. indictatus existit: quia modo pradictus A. B. venit coram me, & inven. sufficient. plegios pro fine suo cum dict. dom. Rege pro premis faciend. Ideo ex parte dicti dom. Regis vobis conjunctim & divis. mando quod ad executionem Brevis pradicti ulterius fac. supersed. omnino. Et si ipsum A. B. ea occasione & non alia ceperitis, & in prisona dicti dom. Regis detineritis, tunc ipsum sine dilatione ab eadem deliber. faciat. seu unus vestrum delib. faciat. & habeatis, seu unus vestrum habeat hoc preceptum ad Sessiones prad. Dat die Augusti, anno regni, &c.

Superledeas de Capias indictat pro fine.

**I**ohannes St-George Armig, unus Justic. domini regis nunc ad pacem in Cantabr. com. prad. conservand. assign. Vic. Com. prad. salutem. Quia C. D. de A. Crom. 234. in dict. com. Yeoman, venit coram me, & inven. suffici. manucapt. essendi ad proximam generalem Sef. pacis in comitat. prad. tenend. ad faciend. finem cum dicto dom. rege pro quibusdam transgres. contemp. et offencis, unde indictatus existit, Ideo tibi precipio, quod de capiend. pref. C. D. imprison.

M m m

nand.

nand. sem ipsum ea occasione aliquatit. molestand. omnino superfed. & habeat ibi tunc hoc praeceptum, Teste me, &c.

Superfedeas de Capias indictat. de felonis.

Crom.  
234.  
Cantabr.

**T** Albot Pepis Armig. unus Iusticar. domini regis nunc ad pacem in Com. prad. conservand. assignat. vic. comit. prad. Necnon omnibus & singulis ballivis, constabul. ceterisque dicti domini Regis ministris tam infra libertates quam extra in dict. com. salut. Quia A. B. de C. in com. pradiet. Husbandman, venit coram me, & inven. sufficient. secur. essendi coram Justic. dicti dom. regis ad pacem in com. prad. conserv. (Necnon ad diversa felonias, transgr. & alia malefacta in eodem Com. audiend. & terminan. ass.) ad prox. general. Sess. pacis in com. prad. tenend. ad r. spona, dict. dom. Regi, de divers. felon. & transg. unde coram eis indict. existit, Ideo ex parte dicti dom. reg. vobis & cuilibet vestrum mando, quod de capiend. prad. A. B. ea ex causa superf. omnino, & si eum ea occasione & non alia ceperitis seu impris. tunc ipsum sine dilatione deliber. faciat. Dat. &c.

Superfedeas de exegi fac. de felonis.

Cantabr.

**C** Arolus, &c. vic. com. Cantabr. salutem. Quia C. D. de A. in com. suo Yeoman, venit coram E. F. &c. & invenit sufficien. manucaption. essendi coram custod. pacis nostra (ac Just. nostris ad diversas felonias, &c.) ad generalem session. pacis nostra apud C. tali die tenend. ad respondend. nobis de quibusdam felonis unde indictatus est, Ideo tibi precipimus quod de ulterius exigend. presat. C. D. ad aliquod comitat. suum, vel inprisonand. si eum ea occasione aliquatiter molestand. omnino superfed. & habeas ibi tunc hoc breve. Teste Willielmo Marche apud H. tali die & anno.

Superfed. ad delibrand. prisonar. cap. pro transgress. vel simil.

**M**. D. ar. unus Justic. &c. Constabul. ville de B. Necnon custodi Gaole dicti domini Regis in Com. prad. salutem. Quia W. C. de B. Laborer venit coram me, & invenit suffic. securitat. essendi coram Just. dicti Domini Regis ad proxim. generalem session. pacis in com. prad. tenend. ad respond. tam domino Regi quam B. C. de quibusd. transgress. seu contemp. ribus, &c. per ipsum perpetratis. Ideo vobis & cuilibet vestrum mando, qd. pradiet. W. C. a custodia vestra sine delatione deliberari faciat, & alia mandato meo inde direct. interim superfediat. Et hoc mandatum meum erit vobis & cuilibet vestrum Warrant. Datum apud Westmasting tali die, &c.

Recognisances. Cap. 123.

A single Recognisance taken before

Justices of Peace.

Cantabr.

**M** Emorand. quod die anno Regni domini nostri  
Caroli Dei gratia Anglia, Scotia, Fran. & Hib. Regis, fidei defen-  
soris,



foris, &c. venerunt coram Mi. Dalton, & Isaac Barrow armiger. Justiciar. dicti domini Regis ad pacem in Com. C. conservand. assignat. I. S. de B. in comitatu predicto Yeoman, & W. S. de eadem Weaver, ac R. D. de S. in comitat. predict. Taylor, & recognover. se debere dicto domino Regi, viz. quilibet manucapt. prad. quinque libr. & predict. I. S. decem libr. bone & legalis monete Anglia, (solvend. eidem dom. regi in festo Purificationis beate Marie virginis proxim. futur. post dat present.) Et nisi fecerint, concesserunt pro se, hered. executor. & administ. suis per presentes quod dicta separales summa levent. & recuperunt. de maneriis, messuagiis, ter. tenement. bonis, catallis, & hereditament. Ipsor. I. S. W. S. & R. D. hered. executor. & assign. suor. ubicunq; fuerunt invent. Dat. & c.

## Another single Recognisance.

**M**emorand. qd. die anno regni domini nostri Cantabr. Caroli Dei grat. & c. D. E. de Balsam in com. prad. Yeoman, personalit. venit coram me Mi. Dalton armig. uno Just. dicti dom. regis ad pacem in com. predict. conservand. assign. & recogn. se debere dicto dom. regi 10 li. bone & legal. monete Angl. (de bonis & catall. ter. & tenement. suis fieri & levari; ad opus dicti dom. regis, hered. & successorum suorum) si defecerit in conditione indorsata.

## Alias.

**M**emorand. qd. die an. regni, & c. vener. coram me M. D. Cantabr. uno Just. & c. assign. T. H. de Westwarr. in com. prad. Yeoman, & I. S. de eisdem vil. & com. Husbandman, & manuceper, & uterque eor. separatim manucepit sub pena 5. li. legalis monete Anglia, pro W. St. de W. prad. Tailor, \* Et prad. W. St. assump. pro seipso sub pena 10. l. consimilis moneta Angl. quas quidem separales summas recognover. & quilibet eorum ut pradicetur recognovit se debere dicto dom. regi de terris & tenem. bonis & catallis suis fieri, &c. Si prad. W. St. deficer. in perform. condit. introscript.

If the party to be bound be within age, then shall he be bound by sureties only, (but he himselfe shall not be bound) and then shall the Recognisance be ut supra, to this marke (\*) and then as followeth: Qui infra aetatem xxi. annorum existit, Quas quidem separales summas recognover. & uterque eorum ut pradicetur recognovit se debere, & c. ut supra.

## A Recognisance for Peace.

**M**emorand. qd. die anno regni dom. nostri Caroli Dei gra. & c. R. P. de E. in com. prad. Yeoman, in propria person. sua venit coram me Tho. Tirrel armig. una Just. dicti dom. Reg. ad pacem in dicto com. conservand. assign. & assumpsit pro seipso sub pena 20. li. & H. I. de L. in com. prad. Yeoman, & N. N. de, & c. & P. Q. de, & c. Husbandmen, tunc & ibid. in propriis personis suis similiter vener. & manuceperunt pro prad.

prad. R. P. viz. quilibet eor. separat. sub pœna 100. s. qd. idem R. P. personalit. comparabit coram Just. dicti dom. reg. ad pacem, ad prox. general. sessionem pacis in com. prad. tenend. ad faciend. & recipiend. qd. ei per curiam tunc & ibid. injungetur: Et quod ipse interim pacem dicti dom. regis custodiet erga ipsum dom. reg. & cunct. popul. suum, & precipue versus M. N. de prad. Yeoman, & qd. dampnum vel malum aliq. corporale aut gravamen praf. M. N. aut alicui de populo dicti dom. regis, quod in lesionem aut perturbationem pacis ipsius Domini Regis, seu praf. M. cedere valeat quovismodo, non faciet, nec fieri procurabit. Quam quidem sum. viginti lib. prad. R. P. & quilibet manucapt. prad. predictas separales summas cent. solid. recognover. se debere dicti dom. regi de terris & tenementis, bonis & catallis suis, quorumlibet & cujuslibet eor. ad opus dicti dom. regis hered. & successor. suor. fieri & levari (ad quorumcunque manus devenerint) si contingeris ipsum R. P. premissa, vel in eorum aliquod in aliquo infringere, & inde legitimo modo convinci, In cujus rei testimon. ego predictus Tho. Tirrel sigillum meum apposui, dat. apud, &c.

Li. Intr.  
453.

And if the Justice shall only subscribe his name to the Recogn. without his seal, it is well enough, and so is the usuall course and form with us, and that in either of these sorts; sc. *Recognit. coram me R. Th.* or only to subscribe the Justices name thus, *R. Th.*

Or thus for the Peace.

Cantabr.  
Lamb.  
109.

**M**emorandum, quod die, &c. A. B. de &c. & C. D. de eadem, Yeoman, venerunt coram me Johanne Layer armiger. uno Justiciar. &c. & manuceperunt pro I. S. nuper de L. &c. quod ipse personaliter comparabit coram me prafato Iohanne Layer & sociis meis Justiciar. pacis nomini regis ad proximam generalem session. &c. & quod ipse interim geret pacem erga cunctum populum dom. regis, & precipue erga R. B. &c. viz. quilibet manucaptorum predict. sub pœna vigint. librar. Et predictus I. S. assumpsit ut supra pro seipso sub pœna quadragint. librar. Quam quidem summam quadragint. lib. prad. I. S. et quilibet manucaptorum prad. dict. summam vigint. libror. recognoverunt, &c. ut supra.

And this may be well done also by a single Recogn. in Latin, ut supra, with a Condition added, or endorsed in English, for the keeping of the peace, and for the day and place of the parties appearance at the quarter Sessions, as followeth.

*A Condition to keepe the Peace.*

**T**He Condition of this Recognisance is such, that if the within bounden I. S. shall personally appear before the Iustices of our sayd Sovereigne Lord the King, at the next generall Sessions of the Peace to be holden in the sayd County of Cambridge, to doe and receive that which

which by the Court shall be then and there enjoined him: and that he in the meane time do. keepe the peace of our said Sovereigne Lord the King, towards the Kings Majesty and all his liege people, and especially towards A. B. of C. aforesaid, Yeoman, That then, &c.

A Recognisance for the good behaviour.

**M**emorand. qd. die mensis anno Regni Caroli, &c. R. G. de, &c. et H. C. et I. S. de ead. &c. in propriis personis suis vener. coram nobis Isaac Baro, & Roberto Hagar armig. Just. dicti dom. reg. &c. Et praed. H. C. et I. S. manuceperunt pro praefat. R. G. et idem R. G. ad tunc assumpsit pro seipso, qd. idem R. G. personaliter comparabit coram Just. dicti dom. reg. ad pacem, &c. ad proximam generalem Sessionem, \* &c. Et quod ipse interim se bene geret erga dom. reg. et cunctum populum suum, et praeipue erga I. B. de C. &c. sc. qd. ipse non inferet, nec inferri procurabit, per se, nec per alios, See the  
Recog. for  
the Peace. dampnum aliquod seu gravam. praefato I. B. seu alicui de populo ipsius dom. reg. de corporibus suis, per insidias, insultus, seu aliquo alio modo, quod in lesionem seu perturbationem pacis dicti dom. reg. cedere valeat quovismodo, viz. uterq. praed. H. C. et I. S. sub poena cent. lib. et praed. R. G. sub poena ducent. lib. Quas. Lib Int.  
463. quidem separales summas cent. lib. uterq. praedict. H. C. et I. S. (ut praedictur) per se, ac praedictus R. G. praedict. summam ducentum lib. recognoverunt se debere dict. Dom. regi de terris et tenementis, bonis et catallis suis, et quorumlibet, ac cujuslibet eorum, ad opus ipsius dicti dom. Regis fieri et levare, si contingat praef. R. G. in aliquo premiss. deficere, et inde legitimo modo convinci. Dat. &c.

Or thus, for the good behaviour.

**M**emorand. quod die mensis anno regni Cantabr. Caroli, &c. N. G. de, &c. in propria persona sua venit coram nobis Isaac Baro, & Roberto Haggar, Armigeris, Just. dicti domini Regis ad pacem in dicto Com. conservand. assig. Et assumpsit pro seipso sub poena 200. li. Et H. C. et I. S. de eisdem villa et Com. Husbandman, tunc et ibidem in propriis personis suis similiter venerunt, et manuceperunt pro praefato N. G. viz. uterque eorum separatim sub poena centum lib. Quod idem N. G. personaliter comparabit coram Just. dicti dom. Regis ad pacem, &c. ad proximam generalem Sessionem pacis in Com. praed. tenend. ad faciend. et recipiend. qd. ei per Cur. tunc et ibidem injungetur. Et quod ipse interim se bene geret erga dom. Reg. et cunctum populum suum, et praeipue erga I. B. de C. &c. sc. qd. ipse non inferet, nec inferri procurabit, per se nec per alios, dampnum aliquod seu gravamen praefato I. B. seu alicui de populo ipsius dom. regis de corporibus suis, per insidias insultus, seu aliquo alio modo, quod in lesionem seu perturbat. pacis dicti dom. regis cedere valeat quovismodo. Quas. quidem separales summas &c. ut supra.



*Or by a Recognisance, with this Condition subscribed or inserted.*

**T**He Condition of this Recognisance is such, That if the above bounden R. G. shall personally appeare before the Justices of our Sovereigne Lord the King, at the next generall Sessions of the peace, to be holden in the County of C. to doe and receive that which by the Court shalbe then and there injoined him : and that in the meane time he be of good behaviour (and do keepe the peace of our said Sovereigne Lord the King) towards his Majesty, and all his liege people, That then, &c.

*Or thus.*

*Conditio Recognitionis prædictæ talis est, Quod si prædictus G. N. imposter se bene geret, (& pacem dom. regis conservabit) erga dict. dom. Reg. & cunctum populum suum, qd tunc recognitio prædicta pro nullo teneatur, alioquin in suo robore permanere.*

*Or thus.*

*Lamb. 125. Lib. Intr. 454. Cognitio Recognit. prædictæ talis est, Quod si prædictus R. G. imposterum se bene geret, & pacem dom. regis conservabit, erga dict. dom. Reg. & cunctum populum suum, & præcipue erga I. B. de, &c. & nullum dampnum corporale, nec aliquid quod in lesionem pacis dom. regis cedere valeat præfato I. B. seu alicui de populo ipsius domini regis faceret quoquo modo, ex tunc recognitio prædicta pro nullo teneatur, alioquin in suo robore permaneat.*

33. H. 8. c. 39.

Note, that all Bonds, Obligations, and Recognisances that shall be taken by any Justice of peace (or other person) for any cause touching the King, must be made and taken in the Kings name, and by these words *Domino Regi, &c.* See heereof *antea*, tit. *Surety for the Peace*, and *Recognisances*.

Also note, that the Recognisf. runneth, *De terris & tenementis, bonis & catallis, &c. fieri & levare, &c.* And yet the King may be at his election, to take execution of the body of the Recognizors, (as well of the principall, as of the sureties) or of their lands and chattels, (for the summe in the Recognisance contained) *per Curiam* 7. Hen. 4. 34. a. *Vide antea*, tit. *Surety for the Peace*.

And, it seemes, by the Common Law, before the Statute of 33. H. 8. 39. that in all cases where a man is a bebtor to the King, as well his body as his Lands and goods, are liable to the Kings Execution : For *Theaurus regis est pacis vinculum, & Bellorum nervi*. And therefore the Law doth give to the King full remedy for it. See *Coke* 3. 12. b. & *Coke* 11. 93. a.

*A Recognisance to give in Evidence against a Prisoner.*

*Mo-*

**M**emorandum, quod die anno regni domini Cantabr.  
 nostri Caroli, Dei gratia Anglia, Scotia, Francia, & Hibernia, regis  
 fidei defensor. decimo, &c. R. T. de C. in Com. prad. Yeoman; venit coram  
 me Ro. Th. Armig. uno Justic. dist. dom. reg. ad pacem, in Com. prad. confer-  
 vand. assignat. & cognovit se debere dicto dom. regi quinque librarum legalis  
 moneta Anglia sub conditione quod si ipse personaliter comparabit coram Just.  
 dicti dom. reg. ad proximam generalem gaalam delib. in com. prad. tenend. ad  
 tunc & ibid. ostendendum in evidenc. secundum formam Stat. vers. E. G. nu-  
 per de W. in com. prad. qui modo attach. & suspect. felonie Gaule dicti dom. reg.  
 com. prad. commissus existit, quod tunc, &c. Alioquin, &c.

Or this may be done by a single Recognisance, with a Condition en-  
 dorfed, as followeth.

*A Condition to preferre a Bill of inditement, and to give in  
 evidence against a Prisoner.*

**T**He condition of this Recognisance is such, that whereas one A. B.  
 of G. Labourer, was this present day brought before the said Just.  
 by the within bound D. E. and was by him charged with the felonious  
 taking of twenty sheepe, of the goods of him the said D. and thereup-  
 on was sent by the said Justice to the Kings Majesties goale: If there-  
 fore he the said D. E. shall and doe at the next generall goale delivery  
 (to be holden in the said County) preferre or cause to bee framed and  
 preferred one Bill of Inditement of the sayd felony against the said A.  
 B. and shall then also give evidence there concerning the same, as well  
 to the Jurors that shall then enquire of the sayd felony, as also to them  
 that shall passe upon the triall of the sayd A. B. that then, &c. or else to  
 stand in full force for the King.

*Or thus, to give in evidence.*

**T**He condition, &c. that if the above bounden D. E. doe at the next  
 generall Sessions, &c. pursue and give such evidence as hee know-  
 eth against A. B. now prisoner in the Castle of C. concerning certaine  
 felonious acts by him committed, then, &c.

*A Condition to appeare before the Iustices of Peace at  
 their next Sessions.*

**C**onditio istius Obligationis talis est, quod si A. W. de &c. Spinster, in pro-  
 pria persona sua compareat coram Justic. dom. regis de pace in com. C. con-  
 servand. assign. (necnon ad, &c.) ad prox. Sessionem pacis dicti dom. regis in  
 com. prad. tenend. ad respondend. tam dicto domino regi, quam G. S. de placito  
 transgressionis & contemptus contra formam statuti servient, Quod tunc pre-  
 sens Obligatio vacua, & pro nullo habeat, & si prad. A. contra premissa sen-  
 eorum aliquod in futur. fecerit, quod tunc presens obligatio in omni suo robore  
 stet & effectus, &c.

Or

*Or thus.*

**T**He Condition of this Recognisance is such, That if the within bounden A. W. shall make his personall appearance before the Kings Majesties Iustices of the peace at the next quarter Sessions of the peace to be holden for the said County of Cambridge, then and there to make answer unto such matters as on his Majesties behalfe shalbe objected against him (by A. B. of &c. or concerning &c. and there shew the matter shortly) and shall also stand to, and abide such further order as the said Court shall award or set downe therein, That then and from thenceforth this present Recognisance shalbe frustrate and void, or else to remaine in his full force, strength and vertue.

*Another for him that hath dangerously hurt one.*

**T**He Condition of this Recognisance is such, That wheras the within bounden R. W. hath now lately dangerously hurt one I. T. of F. within the sayd County of Cambridge, Yeoman, giving him divers blowes on the head, face, and left side with a Bill, so as the said I. T. is in danger of death thereby: If therefore the sayd R. W. shall make his personall appearance before the Kings Majesties Justices at the next generall Gaole delivery, to be holden in the sayd County of, &c. Then and there to make answer unto the premises, and to doe and receive that which by the Court shall bee then and there enjoyned him, And that he the sayd R. W. in the meane time doe keepe the peace of our sayd Sovereigne Lord the King, towards the Kings Majesty, and all his liege people, That then, &c.

*A Condition for Alehouse-Keepers.*

This or  
the like  
form, have  
heretofore  
bin allow-  
able.

**T**He condition of this Recognisance is such, That wheras the within bounden A. B. is admitted and allowed by the within named Sir Ed. Peyton, and Hen. Vernon, (two of the Kings Majesties Justices of the peace within the County of Cambridge within written) to keep a common Alehouse or Tipling house, and to use common selling of Ale or Beere, only within the now heuse of him the sayd A. B. (and not elsewhere) situate in the high street of the Towne of M. within written, and called the signe of the Hart; If therefore he the sayd A. B. during such time as he shall keepe such common Alehouse there, shall not suffer any unlawfull play at the Tables, Dice, Cards, Tennise, Bowles, Closh, Quoits, Loggets, or other unlawfull games to be used in his said house, or in his Garden, Orchard, or other his ground, or place, (especially by mens servants, Apprentices, common Labourers, or idle persons,) nor dresse, or cause, or suffer to be dressed any flesh to be eaten upon any day forbidden by the Lawes or Statutes of this Realme of England,



England : nor wittingly and willingly admit, or receive into his said house, or any part thereof, any person notoriously defamed, of, or for theft, incontincie, or drunkenesse, or that shall be beforehand notified to him the said A. B. by the Constable of M. aforesaid, for the time being, or by his deputy, to be an unmeet person to be received into a common Alehouse: Nor shall keep or lodge there any strange person, above the space of one day and one night together, without notice thereof first given to the Constable, or his deputy there. And finally, if he the said A. B. during all the time that he shall keep common selling of ale or beer in the said house, shall and doe there use and maintaine good order and rule : then this present Recognisance to be void, &c. or else &c.

Or where the Iustices of peace at their meeting take divers such Recognisances, they were made shortly, as followeth.

**M**emorand. quod die Aprilis, an. regni dom. nostri Caroli, &c. coram nobis Ed. Peyton, milite & Baronet. & H. U. armig. duobus Iusticiar. &c. venerunt.

A. B. de Newmarket in Com. pradiet. Victualler, & cognovit se debere dicto Dom. regi x. li. Et C. D. de, &c. & E. F. de, &c. uterque eorum recognovit se debere dicto Domino regi v. li. bona & legalis moneta Angl. de bonis & catallis. terris & tenem. suis, fieri & levare ad opus, &c. si defecerit in Conditione sequente.

The Condition of this Recognisance is such, That if, &c. (and write the Condition at large.)

G. H. de Newmarket, in Com. pradiet. Victualler, & cognovit se debere dicto dom. regi x. li. Et I. K. de, &c. & L. M. de, &c. uterque eorum recog. se debere dicto domino regi v. li. &c.

*Sub Conditione ut supra.*

N. O. de Newmarket, in Com. pradiet. Victualler, & cognovit se debere dicto Dom. regi x. li. Et P. Q. de, &c. & R. S. de, &c. uterque eorum recog. se debere dicto domino regi v. li. &c.

*Sub Conditione ut supra.*

T. U. de Soham, in Com. pradiet. Victualler, & cognovit se debere dicto dom. regi x. li. Et W. W. de, &c. & I. S. de, &c. uterque eorum recog. se debere dicto domino regi v. li. &c.

*Sub Conditione ut supra.*

*Et sic de ceteris.*

For the manner of this Condition for Alehouse-keepers, it is (by the statute) partly referred to the discretion of such Justices of peace, as take such recognisance, or bond, as you may see before, *viz. Alehouses.*

And in some Shires the Justices of peace did condescend and agree upon certain Articles framed by their discretions, and generally to bee propounded to all common Ale-sellers, taking the bond for the performance of the same articles: a copie whereof they did use to deliver to every of them, which maner was a vowable also.

Amongst Articles of this kinde, I did commend to the Justices care these three especially.

First, that no Alehouse-keeper upon the Sabbath day should receive or suffer to remain any person whatsoever (as their guests) in any their houses, or other places, to tipple, eat, or drinke, other then travellers, and such as come upon necessary businesse.

Secondly, that they suffer no person whatsoever, resorting to their houses only to eat or drink, to remaine or be there after nine of the clock in the evening, from Michaelmas till Lady day; or from Lady day till Michaelmas, after ten of the clocke at night.

Thirdly, that they suffer no person, resorting to their houses only to eat and drinke, to remaine tipling thereabove one houre, other than travellers.

But note that now there be divers Articles of far better direction, published (touching Alehouses) by Proclamation, given by the Kings Majesty at Newmarket, the 19. of January, in the 16. yeare of his Highnesse reigne of great Britaine, France, and Ireland, *anno dom. 1618.* in manner and forme following, *viz.*

**F**irst, that that the Justices of peace of every County, City or Towne corporate within this Kingdome, and the dominion of Wales, doe once every year, in the moneths of April and May, assemble themselves, either at a speciall sessions, or such other meeting as they shall appoint for that purpose (respecting the ease and convenience of the people of the Countrey) and there call before them, or any two of them (whereof one to be of the *Quorum*) all such persons as doe sell ale or beer by retaille in any place (as well within liberties as without) within such County, City, or Town corporate; and then & there to take true certificate and information from men of trust, who be persons of honest conversation, and who not: and to give licence to such persons, as they in their discretions shall thinke meet, to keepe common Ale houses, or Vi-tuallung houses, within the places where such persons dwell.

2. That

2. That in the licensing of the said Victuallers and Alehousekeepers, the forme of the Recognifance, hereafter following, and the Condition thereunto annexed, be used, and no other.

**M**emorand. quod die anno regni domini nostri Caroli Dei gratia Anglie, Scotie, Francie, et Hibernie Regis, fidei defensoris, &c. coram T. P. et H. D. armiger. Iusticiar. dicti domini Regis ad pacem in Comitatu pradict. conservand. assignat, &c. A. B. de &c. et C. D. de, &c. manuceperunt pro W. St. de, &c. Victualler, viz. uterque manucept. pradict. sub pena quinque librar. et pradict. W. St. assumpti pro se ipso sub pena x. li. quas concesserunt se debere dicto dom. Regi, &c. Sub Condit. seq.

**T**He Condition of this Recognifance is such, that whereas the above (or within) bounden is admitted and allowed by the said Iustices to keep a common Alehouse and Victuallinghouse, untill the first of April (or for the space one whole yeare next ensuing the date hercof) and no longer, in the house where he now dwelleth, at in the said County of and not elsewhere in the said County. If therefore the said shall not, during the time aforesaid, permit or suffer, or have any playing at Dice, Cards, Tables, Quoits, Loggets, Bowles, or any other unlawfull game or games in his house, yard, garden, or backside; nor shall suffer to bee, or remaine in his house, any person or persons (not being his ordinary household servant) upon any Sabbath-day, or Holy-day, during the time of Divine Service or Sermon; nor shall suffer any person to lodge or stay in his house above one day and one night, but such whose true name & surname he shall deliver to some one of the Constables, or in his absence to some of the Officers of the same Parish, the next day following, (unlesse they be such person or persons as he or she well knoweth, and will answer for his or their forth coming:) nor suffer any person to remaine in his or her house tipling or drinking contrary to the Law, nor yet to bethere tipling or drinking after nine of the clocke in the night time, nor buy or take to pawne any stolne goods, nor willingly harbour in his said house, or in his barnes, stables, or other where, any Rogues, Vagabonds, sturdy beggars, masterlesse men, or other notorious offenders whatsoever; nor suffer any person or persons to sell or utter any Beere or Ale, or other victuall by deputation, or by colour of his or her Licence. And also, if he shall keep the true assise and measure in his pots, bread, and otherwise, in his uttering of his Ale, Beer, and Bread;



Bread; and the same Beere and Ale to sell by sealed measure, and according to the assise, and not otherwise: and shall not utter or sell any strong Beer, or strong Ale, above a peny the quart, and small beer or small ale, above a halfe-peny the quart, and so after the same rates: and also shall not utter, nor willingly suffer to be uttered, drunk, taken or tipled any tobacco within his said house, shop, cellar, or other place thereunto belonging, That then, &c.

3. That every Alehouse-keeper and Victualler, so to be licenced, do enter into Recognisance with two able sureties, to be bound in 5*l.* a peece, and the principall 10*l.* at the least, for the performance of the Condition of the said Recogn. which shall endure but for one whole yeare, and then to determine, unlesse it shall seeme fit to the Iustice of peace to renew the same againe, by taking a new recog. of the same condition: and whatsoever date the recog. shall have, it is to endure but untill the said moneth of April and May, or one of them.

4. That the Clerks of the peace, Town-clerks, or their Deputies respectively, be taken to attend the Iustices of peace at such their meetings, or assemblies, and that they doe there take the recog. aforesaid of every Victualler or Alehouse-keeper licenced, and doe duly enter them amongst the records of the sessions of the peace in their charge, whereby his Majesty may be duly answered of the forfeitures that shall bee made of the parties so bound.

5. That the Clerks of the peace, and Town-clerks aforesaid, or their deputies, shall within some convenient time after the taking of the said recognisance, fair ingrosse the Recognisance and condition in parchment which they shall keep as the Originall, and send a true copy of the said recognisance, examined with the said originall, to every Alehouse-keeper allowed, whereby he may the better informe himselfe what he and his sureties are bound to observe.

6. That the Clerkes of the peace, and Town-clerks, or their deputies, doe write out, and bring with them to every Sessions of the peace, or other meeting of the Iustices, a Register booke containing the true names, surnames, and places where every Alehouse-keeper or Victualler that is licenced doth dwell, to the end it may appeare to the Iustices of the peace who be licenced, and by whom, and who be not, and what other alterations have been from time to time, for the placing of men of honest and good conversation, and displacing of others of ill behaviour.

7. That the Clerks of the peace, and Town-clerks & their deputies, may take of every Alehouse-keeper for their fee, for performing of the

the services aforesaid, at the time of the acknowledgement of the sayd Recog. the fee of 18.d. and no more, over and above the fee of 12.d. allowed for the Iustices clerks by the statute, which shall bee payd to the sayd Iustices clerks.

8 That in case the Alehouse-keeper, not knowing of the Iustices meeting, or being hindred by sicknesse, or other such like impediment, shall faile of admittance at the generall or publike assemblies, and shall notwithstanding be admitted or licensed by two Iustices of the Peace, (whereof one to be of the *Quorum*) the Recognizance with condition faire ingrossed in parchment in the forme prescribed, as aforesayd, shall forthwith, or at the next Sessions at the furthest, bee returned to the Clerkes of the Peace, or the Towne clerkes respectively, under the hands of the Iustices, before whom such Recognizance was taken, together also with the sayd fee of eightene pence for the entring, registering, making, and delivering of a copy under his hand to the Alehouse-keeper, as aforesaid.

9 That none be licensed or allowed to keep an Alehouse that hath not one convenient lodging at least in his or their houses, for the lodging of any passenger or traveller, and to have alwaies in her or their houses, good and wholesome small beer or ale, of two quarts for a peny, for the reliefe of the Labourer, Traveller, or others that call for the same.

10 That the Iustices of peace within their severall Precincts, do not permit or suffer any unlicensed Alehouse-keeper or victualler, to sel beer or ale, but that they proceed against them by all due and lawfull meanes whatsoever; and that they be carefull, from time to time, to cause the Brewers to be proceeded against in their generall and quarter Sessions, for delivering Beer or Ale, to such unlicensed persons, according to the statute in that case provided.

11 That the clerks of the peace, or town-clerks respectively, do once every yeer, in *Trinity* Term, make and bring in a brieve of all such Recog. as shall be taken within every County, City, and Town corporate, into the office of the Patentees, (appointed by them for that purpose) to the end all concealments of Recog. taken in that behalfe may be discovered; and the benefit accruing unto his Majesty, by such as wilfully break the same, may be more duely prosecuted; of which, that his Highnesse be not defrauded, order is given to the Paten. that with the allowance of the chief Iust. of the K. Bench, there be appointed Committees in every County, for the recovery thereof from time to time.

12 That the Iustices of Assise in their Circuits, and Iustices of Peace at their generall Sessions of the peace, do from time to time enquire of

the due execution of these presents, and of all other abuses, disorders, and misdemeanours whatsoever, committed, or suffered, against the provisions aforeseyd, and the true meaning of them.

*A License to keepe an Alehouse* Chap. 124.

Cantabr.

**I**ohn Cotton Knight, and Michael Dalton Esquire, two Justices of the Peace of our Sovereigne Lord the Kings Majesty, in his Highnesse County of C. send greeting in our Lord God everlasting. Know yee, that wee the said Justices, of good and credible report to us made, by divers credible and honest persons, &c. that I. W. of, &c. is a man meet to keepe a common Alehouse, in the house where hee now dwelleth, have licensed, allowed, and admitted, and by these presents do license, allow, and admit the said I. W. to keepe a common Alehouse or tipling house at L. for one whole yeere, next ensuing the date heereof, so that the said I. W. suffer not any unlawfull games to be used in his said house, nor any evill rule or order to be kept within the same, during the time of his sayd License: for the using of which License accordingly, we doe you to wit, that we have bound the said I. W. in 10l. and two other sufficient sureties, in 100. s. apeece by Recognisance to the Kings Majesties use. In witness whereof, wee have heereunto set our hands and seales. Dated, &c.

*Or thus.*

**I.** C. and M. D. two Justices of the Peace of our Sovereigne Lord, &c. To all Bailiffes, Constables, and other the Kings Majesties Officers, greeting: Know ye, that we the said Justices have licensed, and by these presents doe license I. W. of, &c. to keepe a common Alehouse in L. aforeseyd, for one whole yeere next ensuing the date heereof: and have bound the said I. W. by Recognisance with sureties to the Kings Majesties use, that he shall maintaine good rule: and further to do and behave himselfe therein, in all things according to the Lawes and Statutes of this Realme, &c.

*Or thus.*

Cantabr.

**W**E whose names are heerunder written, Just. of the P. of our Sovereign Lo. the King, within the County of C. do license and allow I. W. of L. in the said County, to keepe a common Alehouse or tipling house in L. aforeseyd, for and during one whole yeer next ensuing, so as he doth not suffer any unlawfull games to be used in his house, nor any evill rule to be kept there, but do behave himselfe therein according to the Lawes and Statutes of this Realm in that behalf made and provided. In witness, &c.

A



*A License to Brew, and keepe an Alehouse.*

**V**Hereas A.M. of W. in the County of D. Husbandman, hath come before us, *John Cutts* Knight, and *Fr. Brakin* Esquire, two of the Cantrabr. West. 554  
 K. Ma. Just. of P. within the said County, and bound himselfe in a Recp. with sufficient sureties, to brew and sell, and keep a common Alehouse, according to the stat. made in the fifth yeer of the reign of our late Sovereign Lord, K. Ed. 6. Now know ye, us the said *John Cutts* and *F. Brakin*, to have licensed the said A.M. to brew, to sell, and to keep a common Alehouse, according to the said Statute. Given under our hands, the 13 of July, in the, &c.

*A License for a Recusant to travell, &c.*

**V**Hereas R. C. of L. in the County of C. being a Recusant, convicted, Cantrabr.  
 hath confined himself to L. aforesaid, being the usuall place of his abode, according to the stat. made in the 35. yeer of the reigne of our late Sovereign Lady Q. *Elizabeth*: Know ye, that we, &c. foure of the Kings Majesties Justices of peace within the said County, doe by the consent of the right Reverend Father in God, *Nicholas*, by Gods providence Lord Bishop of Ely, at the request of the said R. C. for the dispatch of his urgent and necessary businesse, grant and give license to the said R. C. to travell out of the precincts or compasse of five miles limited by the said statute, at all times, untill the first day of Nov. next coming, and at the first day of Nov. to returne againe to L. aforesaid. In witnesse, &c. See *hic antea*, tit. *Recusants*.

*A Testimoniall or Passport to Travell.*

**S**ir *Roger Millisent* and Sir *James Reynolds* Knights, two of the Kings Cantrabr.  
 Majesties Just. of P. within the said County, to all Just. of P. Majors, Bailiffes, Constables, and all other his Majesties Officers and Ministers whatsoever, send greeting in our Lord God everlasting. Forasmuch as the bearer heerof E. P. (*heere shew the cause of his travell*) hath desired our Testimoniall (or License) for his safe travell unto the City of B. where (*heere shew whither he is to go.*) In consideration whereof, know ye, we the said Sir *Roger Millisent* and Sir *James Reynolds*, so far as in us lieth, have licensed the said E. P. to travell and passe the direct way from H. within the said County of C. whereas he lately dwelled, unto the sayd City of B. so as his journey be not of longer continuance than twenty dayes next after the date heerof, praying you and every of you, not to molest or trouble the said poor man in his travell, but to permit and suffer him peaceably to passe, so as he shew himselfe in no respect offensive to his Majesties Lawes. In witnesse, &c.

But upon such license, the persons thus licensed to travel, may neither beg,

beg, nor wander idly, nor out of their direct way. Besides, the Justices must be sparing to grant such licenses, except in cases of necessity. For except the person so licensed be one that hath suffered shipwracke, or a souldier or Mariner comming from the seas, &c. *hic cap. 47.* or a Laborer, and only for hay and harvest time, or else be a servant departing from his master, *hic cap. 36.* the Justices of peace are to make no such license, or testimoniall (as it seemeth:) and as for the maner of such testimonial or license for persons suffering shipwrack, and souldiers comming from Sea, and in what maner such persons may travell, see *hic antea, tit. Rogues, cap. 47.*

But in other cases where any shall become poor, lame, blind, or otherwise diseased or decaied, and shall have just cause to travell, they must be provided of mony or maintenance for their travell, otherwise the Justices ought to forbear to grant any such license, and must rather cause them to be sent to, and settled in the Town where they last dwelt.

Also it is fit that such persons do get the allowance of such his Passport under the hand of some Justice of peace, in every County where he is to passe.

*The forme of a Testimoniall for the conveying of a Rogue that hath been punished according to the Stat. of 39. El. c. 4.*

Cantabr.

**I**ohn at Stile, a sturdy vagrant beggar, (of low personage, red haired, and having the naile of his right thumb cloven) aged about yeeres, was this sixt day of April, in the x. yeer of the reign of our Sovereigne Lord King Charles, of England, &c. openly whipped at W. in the sayd County, (according to the Law) for a wandring rogue, and is assigned to passe forthwith from parish to parish by the officers thereof, the next straight way to P. in the County of W. where, as he confesseth, he was borne, (or dwelled last by one whole yeere, &c. if the case bee such) & he is limited to be at P. aforesaid, within ten daies now next ensuing, at his perill. Given at Westwratting, under the hand and seale of M.D. Esquire, one of his Majesties Justice of peace in the sayd County of Cambridge.

Note by the words of the Statute 39. El. 4. such testimoniall must be under the hand and seal of the Just. of peace, Constable, headborough, and of the Minister of the Parish, or any two of them, and yet it is taken that the Justice of peace alone under his hand and seale may make such testimoniall. *Lamb. 206.*

Note also, that it is needfull both in this and in all other Testimonials Certificates, Safe-conducts and passports whatsoever, to note & specify expresse some assured marks of the party, as his stature, colour of haire, com-

complexion, or (if it may be) some apparent scar, or other note, by which he maybe infallibly distinguished and knowne from others; lest (as is often found) both himielfe take the benefit thereof, and he also communicate the use of the same to others, in abuse of him that made it, and of the Law in that behalfe provided.

*A Testimoniall for such as have suffered Shipwrack,*

**A**. B. of C. in the County of Norff. Esquire, one of the Kings Majesties Justices, &c. To all, &c. Forasmuch as the bearer hereof I. S. aged about, &c. having lately been at sea, in a ship called, &c. and hath suffered shipwracke, and got to land at Y. in the said County of Norff. upon the day of last past (as I am credibly informed, as well by the report of the said I. S. as also by the testimony of divers the inhabitants of Y. aforesaid) and for that the said I. S. hath not wherewith to relieve himselfe in his travell homewards to D. in the County of H. where he saith he was borne (or hath a dwelling, &c.) These are therefore to pray you, and every of you to whom these presents shall come, not to molest or trouble the said I. S. in his travell to D. aforesaid, where he is limited to be within dayes next after the date hereof; but desiring you rather to relieve him in his necessity, as to you shall seem meet: and withall, you the Constables of every Towne where he shall come, to helpe him with lodging in convenient time, so that he travelleth the direct way to D. aforesaid, not doing any thing contrary to the laws and statutes of this Realm. In witnesse whereof, &c.

Nett.

Mariner  
or Souldier.

The like (with very little alteration) may be made for a poor Mariner or a poor souldier, comming from the seas, or from beyond the sea.

*Vide, antea, tit. Rogues.*

But these two last Testimonials must be made by some Justice of peace dwelling near where such persons do land.

### Chap. 125.

Warrant. custodi Gaole, ad recipiend. prisonarium pro feloniam.

**E**dwardus Peyton Miles & Baronettus, unus Justiciar. Domini regis nunc ad pac. in Com. prad. conservand. necnon ad diversa felon. transgr. & alia malefact. in eodem com. audiend. & terminand. assig. custod. Gaole dist. domini regis in com. prad. aut ejus locum tenenti, & eorum cuilibet, salutem. Quia R. T. nuper de I. in com. prad. Laborer, jam pro suspicionem cujusdam feloniam per ipsum ut dicitur) perpetrat. per Constabul. villa de R. in com. prad. arrestat. Ideo ex parte disti dom. regis vobis & cuilibet vestrum precipio, quod ipsum R. in custod. vestram recipiatis, seu unus vestrum recipias,

Cantabr.



*ibidem moratur. quousque secundum legem & consuetudinem regni Anglia a custod. vestra deliberetur. Dat. apud Isleham, &c.*

*Alias.*

**E***Dm. P. &c.* to the keeper of the Kings Majesties Gaole at the Castle of Cambridge, or to his deputy there, greeting : these are in his Majesties name to charge and command you, that you receive into your said gaole the body of R. S. late of, &c. taken by E. C. and I. S. Constables of the Towne of W. and by them brought before me for suspicion of felony, &c. and that you safely keep the said R. S. in your said Gaole, untill the next generall Gaole delivery for the said County, if he be notailable : Or if he beailable, then thus, untill he shall be thence delivered by due order of his Majesties Lawes. And hereof fail you not, &c.

*A mittimus of a felon, after his examination taken.*

**Cantabr.** **J***ohn Cotton* Knight, one of the Just. &c. To the Keeper of his Majesties gaole at the Castle of Cambridge in the said County, &c. Greeting. I send you herewithall the body of A. B. late of C. Labourer, brought before me this present day, and charged with the felonious taking of twenty sheep, (which also he hath \* confessed upon his examination before me) and therefore these are (on the behalfe of our said Sovereigne Lord) to command you, that immediatly you receive the said A. B. and him safely keep in your said Gaole, untill that he shall be thence delivered by the due order of his Majesties Lawes. Hereof faile you not, as you will answer for your contempt at your owne petill. Given at Chevely, the      day of      in the      yeare of the reigne of our said Sovereigne Lord *Charles*, by the grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith, &c.

*Alias.*

Or these Warrants or Mittimus, whereby a prisoner shall be sent to the Gaole, may be made in the Kings name, and the *Teste* may be under the name of the Justice of peace, as followeth.

**C***arolus Dei grat. Rex Angl. &c. Cust. Gaola nostra de Cantab. vel ejus locum tenenti, salut. Quia R. S. nuper de B. in Com. Essex laborer, jam profassus e. cujusdam felonie, per ipsum ut dicitur perpetrat. arrest. Ideo vobis & cuilibet vestr. precipimus qd. ipsum R. in custod. vestram Gaola nostra praelat. recipiatis, seu unus vestrum recipiat ibidem moras, quousq; secundum legem regni nostri Anglia a custodia v. stra deliberetur. Teste Ed. R. &c.*

*A mittimus to send to the Gaole an Alehouse-keeper that wilfullyeth contrary to commandement, &c.*

**Cantabr.** **H***enry Vernon*, and *Roger Thornton* Esquires, two of the Kings Majesties Just. of the peace within the said County of Cambridge, To

To the Keeper of the Kings Majesties Gaole at C. Greeting. Whereas R.D. of B. in the said County of Cambridge (upon complaint lately made unto us of the evill rule kept and suffered by him in his house, and other misdemeanors) by warrant under both our hands and scales was discharged of his Alehouse-keeping, and was commanded from us that he should thenceforth use no more common selling of Ale or Beer: And whereas we are credibly informed that the said R.D. (notwithstanding our said warrant and commandement given him to the contrary, as aforesaid) hath ever since obstinately, and upon his owne authority, taken upon him to \* keep a common Alehouse or tiplinghouse, and still continueth the same: We doe therefore send you herewithall the body of him the said R.D. commanding you in his said Majesties name to receive him into your said Gaole, and there safely to keep him, untill such time as he shall be from thence delivered by due order of Law. And hereof fail you not at your perills. Dated at the day of in the yeare of, &c.

\* Or, to use commonly selling of ale or beer.

*Or thus.*

**V** Hereas by warrant or commandement from divers Just. of P. of this County, I.S. of, &c. hath been suppressed for keeping an Alehouse, &c. And forasmuch as complaint hath notwithstanding been made to us (this present day) that the said I.S. hath and doth, contrary to the said commandement, and contrary to the statute in that behalfe provided, still keep a common Alehouse, Therefore we doe send you here withall the body of the said I. S. commanding you, &c. to receive the said I. S. into his Majesties Gaole, and there safely to keep him for three dayes without bail or mainprise; and afterwards untill he shall with two sureties enter into Recognizance, that he shall not keep any common Alehouse, or use common selling of Ale or Beer, and pay his fine of xx.s. according to the statute in that case made and provided. Hereof fail you not, &c.

*A Mittimus (to the Gaole) of the reputed father of a Bastard child, &c.*

**I** Send you herewithall the body of R.C. of B. in the County of C. La. Cantab. bourer, brought before me this present day, and charged by F.S. of the same Town to have gotten her with childe; and for that the said R. refuseth to put in security for his appearance at the next quarter Sessions, & to the end he may be forthcomming when as order shall be taken for the reliefe & discharging of the said town of B. and for the keeping

of the said child (when it shall happen to be born) according to the statute in that case provided: These are therefore on the Kings Majesties behalfe to charge and command you, that immediatly you receive the said R. C. and him safely to keep in your sayd goale, untill such time as he shall be from thence delivered by due order of Law. And heereof faile you not, &c. Dated, &c.

In every Mittimus, the cause of the commitment is to be set downe, to the end it may appeare whether the prisoner be baileable or no. See heereof before in the title *Baylement*.

Also where the Justices of Peace out of their Sessions may heare and determine, and so may commit offenders for the offence or fine, it is necessary that in their Mittimus there bee containd the maner of the offence, and how long time the offender is to be kept in prison for it: See the Mittimus for guns a' terwards.

*A Mittimus, to the House of Correction, of a dangerous Rogue.*

Cantabr.

Or such  
rogue may  
be sent to  
the Goal.  
See before  
tit rogues.

See stat. 7.  
Jac. c. 4 &  
39 El. c. 4.

**I** *John Richardson* Doctor of Divinity, and *Michael Dalton* Esquire, two of the Kings Majesties Justices of the peace within the said County of Camb. To the Master or Governour of the house of Correction at Bottisham (for the East side of the said county) or to his deputy there, Greeting: Whereas I. S. a sturdy vagrant beggar, was this day of September, *anno domini* brought before us, and charged as well with begging and idle wandring abroad, as also with other lewd and disorderly behaviour, so as he appeareth to us to bee dangerous to the inferior sort of people (or such a one as will not bee reformed of his roguish life) contrary to his Majesties Lawes in such behalfe provided: These are therefore to will and require you, to receive the said I. S. and him safely keepe in your sayd house, untill the next quarter Sessions to be holden in the sayd County: and during all that time (that he shall so continue with you) that you hold him to worke and labour, and to punish him by putting Fetters or Givies upon him, and by moderate whipping him, as in good discretion you shall find cause, yielding him for his maintenance only so much as he shall deserve or earn by his labour and work. And that at the said next quarter Sessions you have the said I. S. there, together with this our warrant. And heereof see that you fayle not, &c. Dated, &c.

*A Mittimus to the house of Correction of a disorderly servant, or other disorderly person.*

Cantabr.

**I** Have sent you heerewithall the body of E. C. of W. in the said county of C. being an idle, dissolute, and disorderd fellow: (or one that will not



not keep his service, nor follow any honest course of life } These are therefore to will and require you to receive the said E. C. and him safely to keep ( \* untill that he shall be thence delivered by warrant from my selfe, as some other his Majesties Justices of peace, for this County of Cambridge) and in the mean time to hold him to worke, and to punish him by moderate whipping, and otherwise according to the Law in such cases provided. And hereof see that you faile not, at your perill. Dated, &c. See the stat. 7. Jac. cap. 4.

\* Or by the space of three daies next after the date of this warrant.

*Another for one that runneth away, leaving her charge to the town.*

**V**We have sent you herewithall the body of I. R. of W. single woman, being lately delivered of a childe, and one that is able to labour, and thereby to relieve her selfe, and her said childe, and hath notwithstanding lately runne her way, and left her childe upon the parish, to the charge of the same parish, contrary to the stat. in that behalfe provided : these are therefore to will and require you to receive the said I. R. and her safely to keep, untill the next quarter \* Sessions to be holden for this County; and in the meane to hold her to such workes, and to give her such due correction, by moderate whipping, or otherwise, as shall be fitting in your discretion, and according to the Law in that behalfe provided, yeelding her for her maintenance, &c. *usupra.* And hereof see that you faile not at your perill. Dated, &c. See the statute. 7. Jac. cap. 4. & vide antea tit. Rogues, *biu.*

\* Or else such party must be delivered at the meeting of the Just. upon privie search made for Rogues, and not otherwise.

Note, if any mean person shall but threaten to run away, and leave their family (as aforesaid) any two Justices of Peace of that division, may send them to the house of correction, as aforesaid; but such their threatening must be proved by two sufficient witnesses upon oath, before the said Justices of peace. *Vide antea tit. Rogues.*

*A Mistimus to the house of Correction of the Mother of a Bastard child.*

**V**We have sent you herewithall the body of I. C. of W. in the said County, single woman, being lately delivered of a Bastard child, likely to be chargeable to the Parish of W. aforesaid; and for that the said I. C. is able to labour, and that thereby she may the better relieve her selfe and her said childe, These are therefore to will and require you to receive the said I. into your said house, there to be punished, and set on worke during the terme of one whole yeare, according to the statute in that behalfe provided. And hereof fail you not, &c.

Rogues, vagabonds, sturdy beggars, and other idle, and disorderly persons sent to the house of correction, are there to be punished by

putting fetters or gives upon them, and by moderate whipping. 7. Jac. cap. 4.

So persons running, or threatening to run away, and leave their family to the parish, *ibid.*

The mother of a Bastard childe, &c. shall be set on worke, and punished, *ibid.*

But where by the plaine letter of the law, there is not authority given to whip or punish offenders (sent to the house of correction) there let the Justices of peace forbear to appoint or order any whipping, except it be in open Sessions, or by order of the quarter Sessions.

Note, that the greater part of the Justices of peace assembled at the quarter Sessions, may set downe orders for the correction and punishment of Offenders, committed to the house of correction.

And the houses of Correction are to be used and imployed for the keeping, correcting, and setting to work of such persons as shall be sent thither. See Stat. 7. Jac. cap. 4.

What maner of persons are to be sent to the house of correction, see Stat. 7 Jac. cap. 4. & *hic* cap. 11. 17. 31. 40. 47. 57.

*A Mistrimus to send to the gaole such as shoot, &c. in Guns. Chap. 126.*

*To the Keeper of his Majesties Goale at the Castle of Cambridge, and to his deputy or deputies there, and to every of them.*

FORasmuch as this present day A. B. and C. D. of  
in the same county, Yeomen, did arrest and bring before me at  
(aforesaid) one I. at S. in the sayd county, Mariner,  
whom they had seene, and found the same day (as they sayd) shooting  
in a hand-gun charged with powder and a pellet) at a Cony in a certain  
place in C. within the sayd County, called the Church field, contrary  
to the Law of this Realme, and thereupon prayed mee that justice  
might bee done in that behalfe: I John Cuttes Knight, being the next  
Justice of the peace in the sayd County to the place aforesayd, did then  
at aforesayd, upon the sayd request, take the examination of the sayd I. at S. and did also then and there heare the proofes  
of them the sayd A. B. and C. D. touching the sayd offence, and for that  
it did then manifestly appeare unto mee, as well by the testimonies of  
them the sayd A. B. and C. D. as also by the plaine confession of him  
the sayd I. at S. that he had not then Lands, Tenements, fees, annuities,  
or offices, to the clear value of one hundred pounds, and that he had shot  
in

in the sayd Hand-gunne, in maner and forme as is aforesayd : I do send you heerewithall the body of him the sayd I. at S. as lawfully convicted of the sayd offence before me : requiring you in his Majesties name to receive him into your sayd Goale, and him there safely to keepe (as his Majesties prisoner) untill that he shall have truely payd the pain and forfeiture of x.l. of lawfull money of England, layd upon him for his sayd offence, by the Statute thereof made in the three and thirtieth yeere of the Reigne of the late King Henry the Eighth ; that is to say, the one moyty therof to our sayd Sovereign Lord, and the other moyty to them the said A. B. and C. D. the first bringers of him before me. And this shalbe your sufficient warrant in this behalfe. Heerof faile you not as you will answer for your contempt at your perill : Yeoven at aforesayd, the day of March, in the yeer of the reign of our said Sovereign Lord Charles, by the grace of God, King of England, Scotland, France and Ireland, &c. Defender of the Faith, &c.

By me the sayd John Cutts.

The Justices Record thereof.

**M**emorand. quod vicesimo die Martii, anno regni Domini nostri Cantabr. Caroli, Dei gratia, Anglia, Scotia, Francia & Hibernia regis, fidei Defensor, &c. A. B. & C. D. de in com. pradi. Yeomen, Quendam I. at S. de in dicto com. Mariner, invener. & viderunt apud in com. pradi. die & anno supradict. cum quodam tormento (Anglice vocat. a hand-gunne) onerato pulvere tormentario, & globo plumbeo, (Anglice charged with gunpowder, and a leaden bullet) in quendam curriculum ad tunc existent. in quodam loco ibidem vocato Church-field sagittante, & exonerante dictum torment. contra formam stat. (in Parliament. dom. Henr. super regis Anglia Octavi, apud Westmunst. anno regni su. tricagesimo tertio tenet.) provis. accediti : Ac proinde die & anno supradict. prefat. I. at S. arresterunt, & apud pradi. coram me Johanne Cutts milite, uno, & dicto loco proximo Justic. dicti domini regis ad pacem in dicto com. conservand. (Necnon ad diversas transgress. & alia malefacta in eodem com. perpetrata audiend. & terminand.) assignator : ad tunc una secum adduxerunt, petentes inde justitiam fieri. Qua quidem petitione audita, ega prefatus Johannes Cutts apud pradi. die & anno suprad. debite superinde examinavi pref. I. at S. ac probationes pradi. A. B. & C. D. in hac parte cepi : ac propterea quod tam per probationes pradi. quam per confessionem ipsius I. at S. ad tunc & ib. apparuit mihi manifeste quod pref. I. at S. (cum non haberet in jure suo proprio) nec in jure uxoris sue ad usum suum proprium, nec aliqui alii ad usum ejusdem I. at S. haberent terras, tenementa, feoda, annuitates, aut officia, ad clarum annum valorem centum librarum)



rum) in tormento predicto modo & forma predictis sagittasset, contra formam statuti predicti, Ego prefatus Io. Cutts prenominationum I. at S. die & anno supradicti. proxima Gaole dicti domini Regis apud Cantabr. in com. predicti. (de transgress. predicti. coram me convictum) commisi, ibidem moraturum quousq; penam & forisfacturam decem librar. legalis monet. Ang. vere solveris, viz. unam medietatem inde dicti dom. regis, & alteram medietat. inde dic. A. B. & C. D. primis ejusd. I. at S. coram me ductoribus. In quor. omnium fidem & testim. ego pref. Io. Cutts, his presentibus sigil. meum apposui, Dat. apud  
 prad. die & anno primum supradictis.

Per me pref. Iohannem Cutts.

### Bailement. Chap. 127.

Cantabr.  
 Lamb.  
 341.

**M**emorand. quod secundo die mensis Septembris anno regni domini nostri Caroli, &c. Venerunt coram nobis Iohanne Cage milite, & Roberto Castle armig. duobus Justic. dicti domini regis ad pacem in com. prad. conservandam assignat. (apud H. in com. prad.) A. B. & C. D. de E. in dicti. comit. Yeomen, & ceperunt in ballivum, usq; ad proximam gaole deliberationem in dicto comitat. tenend. quendam F. G. &c. Labourer, captum & detentum in prisoa pro suspitione cujusdam felonie, &c. Et assumpser. super se, sc. quilibet prad. A. B. & C. D. sub pena vlgint. lib. bone & legal. mones. Angl. Et prad. F. G. assumpsit pro seipso sub pena 40. l. similis monete de bonis & catallis, terris & tenement. eor. quorumlibet, & cujuslibet eor. ad opus dic. dom. regis, hered. & successor. suor. levandar. si prefat. F. G. ad eandem proximam gaole deliberat. personaliter non comparabit coram Justiciariis dic. dom. regis, ad dictam gaolam deliberand. assignatis, ad standum recto de feloniam prad. & ad respond. dic. dom. regi tunc & ibid. de & super omnibus que illi obijciuntur. Dat. sub sigill. nostris, die & anno primum supradictis. Vide antea vid. Baylement.

Alias: (sc. if the Gaoler can conveniently bring the prisoner before the Justices.)

**M**emorand. qd. die Augusti, &c. A. B. de C. &c. & E. F. de G. &c. venerunt coram nobis M. D. & I. B. armig. duobus Just. &c. & manucep. pro I. S. de &c. uterq; eorum sub pena 20. l. & prad. I. S. tunc & ibidem similiter. assumpsit pro seipso sub pena 40. l. consimilis monete Angl. de bonis & catallis, terris et tenem. eorum et cujuslibet eorum ad opus et usum dicti domini regis, hered. et succes. suorum fieri et levari si pref. I. S. defecerit in conditione indorsat.

The

**T**He condition of this recognisance is such, that if the within bounden I. S. shall make his personall appearance before the Kings Majesties Justices of peace at the next generall Sessions to be holden for this County, then and there to make answer to our Sovereign Lord the King, for and concerning the suspicion of stealing certain corn, wherewithall he standeth charged, That then, &c.

Alias.

**M**emorandum quod *die, &c. venerunt coram nobis, &c. Cantabr.*  
*A. B. de &c. & C. D. de &c. & E. F. de &c. & manucep' pro R. B.* Crom. 235.  
*de L. in comitat' predict' gener', viz. quilibet eorum corpus pro corpore,* 21 H. 7. 20.  
*quod idem R. B. personaliter comparabit coram prefat' Justic' & sociis suis* Br Main. 44.  
*Justic' dom' regis ad proximam generalem sessionem pacis in comitat' pred.*  
*tenend. ad stand. recte in cur': (si quis versus eum loqui voluerit) de diversis*  
*feloniis & transgr', unde idem R. B. indictatus existit (ut dicitur) & ad res-*  
*pond' dicto dom' regi de eisdem prout debet &c. Videas antea tit. Bailement,*  
 that it must be upon a certain sum of money.

Yet note, upon his last manner of Bailement, the mainpernours shall be onely fined, if the Prisoner make th default. 21. H. 7. 20.

Crom 153.  
Br. Main. 44.

Before the statute of *Marl. cap. 27.* if one arrested, or in prison for Felony, had been bailed, and at the day the prisoner would not answer, but he took himself to his Clergie, &c. then his mainpernours were amerced, &c. But now by that statute, if they have the body at the day, they shall not be amerced, although the prisoner will not answer, &c. Neither shall they forfeit their Recognisance, if they have the body of the Prisoner there, although the Prisoner will not answer, &c. and yet the words of the recognisance or Bailement are usually, *Ad respond. dicto dom' regi, &c. ut supra.* But these words seem to be of course.

Alias, to bail a prisoner for the peace.

**M**emorandum, &c. *A. B. de &c. C. D. de &c. & E. F. de &c. venerunt*  
*coram me M. D. &c. & manuceperunt pro R. B. de &c. quod ipse pa-*  
*cem geret erga cunctum populum domini regis, & precipue erga I. S. sub pœna*  
*cujuslibet manucaptor' xx. li. & predict' R. B. sub pœna 40. li. & qd' predict'*  
*R. B. comparabit coram Justic' domini Regis ad proximam generalem sessionem*  
*pacis pro com' pred. tenend. &c.*

*The Liberate to deliver a Prisoner committed for felony.*

**E**dward Hinde Knight, and Edward Aldred Esquire, two of the Ju-  
 stices, &c. To the Keeper of His Majesties gaole in  
 Greeting. Forasmuch as F. G. &c. Laborer, hath before us found sufficient  
 mainprise to appear before the Justices of the gaole delivery, at the next  
 generall gaole delivery to be holden in the said county, there to answer to

*Cantabr.*  
*Lamb. 342.*

such things as shall be then, on the behalf of our said Sovereigne Lord objected against him, and namely, to the felonious taking of two sheep (for the suspicion whereof he was taken and committed to your said gaole) we command you on the behalf of our said Sovereigne Lord, that (if the said F. G. do remain in your said gaole for the said cause, and for none other) then you forbear to grieve or detain him any longer, but that you deliver him thence, and suffer him to go at large, and that upon the pain that will fall thereon. Given under our seals, this, &c.

Warrant' ad liberand' servientem extra Gaolam.

Canabr.  
Crom. 238.

**F**RANCISCUS Brakin armig' unus Justic' &c. custodi gaole dicti dom. regis in com. pred. salutem. Quia W. C. de N. Laborer, coram me invenit sufficient' securitat' essendi coram Justic' dicti dom. regis ad pacem in com. pred. conservand. &c. ad proximam generalem sessionem pacis in com. pred. tenend. ad respondend. tam dicto dom. regi, quam C. D. de &c. de transgressi. & contemptu suis, contra formam statuti de servientibus nuper editi. & provis. Ideo tibi ex parte dicti dom. regis mando qd' pred. W. C. a prisona tua, si ea occasione & non alia ibid. detineat. sine dilatione delib' fac. Dat' &c.

Wheresoever a Justice of Peace, upon his own motion and discretion, hath committed one to the Goal, or house of Correction, for (want of sureties for) the peace, or good behaviour, or for being a vagrant, or idle person, or the like, it seemeth the same Justice of peace may in like discretion, afterwards discharge him again, and make his Liberate or Warrant to deliver such prisoner. See 14 H. 6. fo 8. Br. impris. 27.

To deliver a Prisoner committed for the Peace or good behaviour.

**F**B. armig. unus Justic' &c. vic' (seu custodi Gaole) &c. Quia I. S. in prisona dom' regis in custod. tua exist' ad sectam cujusd. A. S. de se bene gerend', vel pro pace gerend' erga dom. regem & cunctum populum suum (& precipue erga predict' A. S.) invenit coram me suffi' secur. (vel quatuor manucaptos, scilicet, A. B. C. D. E. F. & G. H. &c. qui manucep. pro predict' I. S. quod ipse I. S. non inferret, nec inferri procurabit per se, nec per alios eidem A. S. seu alicui de populo dicti domini regis aliquod dampnum seu gravamen de corpore suo per minas, insidias, insultum, seu aliquo alio modo, quod in lesionem seu perturbat. pacis domini Regis cedere valeat quovismodo, viz. quilibet eorum manucaptor' sub pena xx li. Ideo ex parte dicti domini Regis tibi in modo quod predict' I. S. in prisona domini Regis in custodia tua ea occasione & non alia exist' in dilate delib' fac. Dat' &c.

Release of the peace. CAP. 128.

The Release of the Justice of Peace.

**E**Go prafa. H. Martin, qui supra nominatum A. B. ad pred. securitatem pacis inveniend': ex mea discretionem compuli, eandem securitat. pacis (quantum



(quantum in me est) ex mea discretione, 1 die Aug. &c. remisit & relaxavi. In cuius rei testimon. huic present. relaxationi mee sigillum meum apposui, dat. die & anno supradictis

The Release of the party (before the same Justice that took it.)

**M**emorand. quod primo die Aug. &c. prefat. C. D. venit coram me Roger Thorneton, & gratis remisit & relaxavit (quantum in se est) predict. securitatem pacis, per ipsum coram me, versus supra nominatum A. B. petitam. In cuius rei testimon. ego prefat. Roger Thorneton Sigillum meum apposui, Dat. &c.

These two former releases are to be written under the Recognisance it self; and if the Justice shall onely subscribe his name to the releale, without his seal, it is well enough: (especially where the Recog. is without seal.)

Or the releale of the party may be by it self in this form, scil.

**M**emorand. qd. C. D. de S. in com. pred. Yeoman, primo die Augusti, Cantabr. anno regni dom. nostri, &c. venit coram me Isaac Baro armig. uno Justic. dicti dom. Regis ad pacem in com. pred. conservand. assig. apud W. in com. pred. & ib. remisit, & gratis relaxavit R. W. de S. in com. pred. Labourer, securitatem pacis per ipsum C. D. versus dictum R. W. coram me petitam. Dat. die & anno supradictis.

And if the release be made before another Justice, which took not, or hath not the Recognisance, it may be thus.

**M**emorand. qd. A. B. de C. in com. pred. Yeoman, primo die Augusti, Cantabr. &c. venit coram me Rob. Hagar armig. uno Justic. dicti Dom. regis ad pacem in com. pred. conservand. assig. (apud W. in com. pred.) & securitatem pacis quam habet versus I. S. de &c. poenitus remisit & relaxavit. Dat. die & anno supradictis.

But note that none of these releases will discharge the Recog. or the appearance of the party bound thereby, but that he must appear according to the condition of the Recog. for the safeguard of his Recog. See hic c. 71.

Release for the good abearing.

**M**r. Lambert seemeth to doubt whether the Surety of the good abearing may be released by the party (because it seemeth more popular than the surety of the peace:) But others do hold that it may be released; and then may the forms of such release be easily made by those which are before concerning the peace, using the words *Securitatem de se bene gerendo*, instead of the words *Securitatem pacis*. But notwithstanding such release, it shall be safe also for the party bound, to appear according to the Recognisance.

Lamb. 126.  
P. R. 22.

*Indentures for Apprentises.*

**T**His Indenture made the \_\_\_\_\_ day of, &c. \_\_\_\_\_ witnesseth, that *A. B.*, *C. D.* and *E. F.* overseers for the poore in the towne of *H.* in the County of *C.* and *I. S.* Churchwarden of the same town, by and with the consent of Sir *I. M.* Knight, and *M. D.* Esquire, two of His Majesties Justices of peace for the County of Cambridge, have by these presents, put, placed, and bound *I. H.* (being a poore fatherlesse and motherlesse childe) as an Apprentice with *R. W.* of *H.* aforesaid Baker, &c. And as an apprentice with him the said *R. W.* to dwell from the day of the date of these presents, untill the said *I. H.* shall come to be of the age of 24 years, (if it be a woman, then untill her age of 21. years, or the time of her marriage) according to the statute in that behalf provided. By and during all which time and term, the said *I. H.* shall the said *R. W.* his Master well and faithfully serve in all such lawfull businesse as the said *I. H.* shall be put unto, according to his power, wit, and ability, and honestly and obediently in all things shall behave himself towards his said Master, his Wife and Children, and orderly and honestly towards all the rest of the family of the said *R. W.* And the said *R. W.* for his part promisseth, &c. the said *I. H.* in the craft, mystery, and occupation the which he useth, after the best manner that he can or may, shall teach and inform, or cause to be taught and informed, as much as thereunto belongeth, or in any wise appertaineth. And also during all the said term to finde unto his said Apprentice, Meat, Drink, Linen, Woollen, Hofs, Shooes, and all other things needfull or meet for an Apprentice, &c. In witness whereof, &c.

*Forcible Entry. CAP. 129.*

The form of the Record (of a forcible Entry) by the Justice upon his view.

Cantabr.

**M**emorandum quod \_\_\_\_\_ die mensis Januar. Anno regni Dom. nostri Caroli, &c. Questum est mihi Johanne Cotton Militi. uno Justiciar. dicti Domini Regis ad pacem in dicto Comitatu conservand. assignat. Quidam *A. B.* de *VV.* in dicto comitatu, Yeoman. qd' *C. D.* de *VV.* pradi. & nonnulli alii pacis dicti domini regis perturbatores ignoti, in domum mansionalem ipsius *A. B.* in *VV.* pradi. manuforti ingressi sunt, & ipsum *A. B.* disseisiverunt, ac eadem manuforti & armata potentia adhuc tenent: ac proinde petit a me sibi in hac parte remedium apponi: Qua quidem querimonia & petitione audita, Ego prefatus Johan. Cotton, immediate ad dictam domum mansionalem personaliter accessi, ac eadem domo ad tunc inveni prefatum *C. D.* & quosdam *E. F.* & *G. H.* &c. domum illam vi & armis, manuforti, & armata potentia (viz. arcubus & sagittis, gladiis, pugionibus, galeis & loriciis)

& loricis) tenentes, contra formam statuti in Parlamento Domini Richardi, super regis Anglie, secundi, anno regni sui decimo quinto tento, provisi, & contra formam diversorum aliorum statuti. Ac propter ea ego pref. Johan. Cotton predictos C. D. E. F. & G. H. ad tunc & ibidem arrestavi, proxime que gaule dicti dom. regis apud castrum Cantabr. in dicto comitatu duci feci, ut de dicta manusforti tentione, per visum & recordum meum convictos, ibidem moremur quousque fines dicto dom. regi pro transgress. suis predictis fecerint. Dat. apud W. pr. ed. sub sigillo meo, die & anno supradictis.

*The form of the Mittimus (to the Gaule) of such a bold land by force.*

**J**ohn Cotton Knight, one of the Justices of the peace of our Sovereign Lord the Kings Majesty, within his said County of Cambridge, to the Keeper of his Majesties gaule at, &c. in the said County, and to his deputy and deputies there, and to every of them, Greeting. Whereas upon complaint made unto me this present day, by A. B. of Weston in the said County Yeoman, I went immediately to the dwelling house of the said A. B. of Weston aforesaid, and there found C. D. E. F. and G. H. of aforesaid, Labourers, forcibly, and with strong hand and armed power, holding the said house, against the peace of our Sovereign Lord, and against the form of the statute of Parliament thereof made in the fifteenth year of the late King Richard the second. Therefore I send you (by the bringers hereof) the bodies of the said C. D. E. F. and G. H. convicted of the said forcible holding, by mine own view, testimony, and record: Commanding you in his Majesties name, to receive them into your said gaule, and there safely to keep them, untill such time as they shall make their fines to our said Sovereign Lord for their said trespasses, and shall be thence delivered by the order of the law of the Land. Hereof fail you not, upon the perill that may follow thereof. Yeoven at Weston aforesaid, under my seal, the day and year aforesaid.

*The form of a Precept (to the Sheriffe) to return a Jury, for an inquiry.*

**J**ohannes Cotton, Miles, unus Justiciarior Domini regis ad pacem in Cantabr. Comitatu Cantabr. conservand' assig' Vicecomit' ejusdem comitatus salutem. Ex parte dicti Domini regis tibi mando & precipio, Quod venire facias coram me apud Balsbam, in comitatu predicto, vicesimo die Septem. proximo futur' 24. probos, sufficientes, & legales homines de vicineto de Weston, in comitatu predicto quorum quilibet habeat 40. solidos terrar' & tenementor' vel redd. per annum ad minus ultra reprisas, ad inquirend' super Sacramenti summi pro dicto domino rege de quodam ingressu manusforti facto in messuag' cujusdam A. B. apud Weston pr. ed. contra formam stat' in Parliam' Dom. Henric. super regis Anglie sexti, anno regni sui octavo tento editi, ut



*dicis. Et videas quod super quem libet furatorum per te in hac parte impa-  
nellandorum viginti solidos, de exitibus ad prefat. diem returns: Et hoc nul-  
latenus omittas sub pœna viginti librar. quam noveris te incursum, si in exe-  
cutione premissor. tepidus aut remissus fueris: Et habeas ibi tunc hoc precep-  
tum. Teste me prefat. Johanne Cotton, decimo die Martii, anno regni do-  
mini nostri Jacobi Dei gratia Anglia, Scotia, Francia & Hibernia Regis,  
fidei defensor, &c.*

Note, when the Justices of peace are to enquire upon the Stat. of 8 H. 6.  
(or any other Stat.) they may make their Precept to the Sheriff, to return  
before them Pannels to enquire for the King (generally) of such things as  
shall be enjoyned them on the Kings Majesties behalf, without saying, to  
enquire of a forcible entry, or of a Riot, &c. *Cromp. 123.*

The form of the Enquiry, Indictment, Presentment,  
or Verdict of the Jury.

*Canabr.*

**I**Nquisitio pro domino rege capt. apud B. in comitat. predict. die  
Julii, anno regni domino nostri Caroli Dei gratia Angl. Scotie, Francia,  
& Hibernia regis fidei Defensor, &c. per sacramentum A. B. C. D. E. F.  
&c. coram Johanne Cotton, Milit. uno Justiciar. dicti domini regis ad pa-  
cem in dicto comitat. conservand. Necnon \* ad diversas felonias, transgres-  
set alia malefacta in eodem comitat. perpetrata audiend. & terminand. assign.  
Qui dicunt suprasacramentum suum predictum qd. A. B. de W. predict. Yeoman,  
diu legitime & pacifice seisitus fuit in dominio suo, ut de feodo de & in  
una messuagio, &c. cum pertinentiis in W. predict. & possessionem ac scisinam  
suam predictam sic continuavit quousque C. D. de &c. & alii malefactores  
ignoti, primo die Septemb. ultimo elapso (\* vi & armis, videlicet, cum ba-  
culis, gladiis arcibus, & sagittis, cultellis, falcastris, lapid, & aliis armis de-  
fensivis & invasivis) in messuagium predict. &c. intraverunt, ac ipsum A. B.  
inde disseisiverunt & manusforti expul, & eundem A. B. sic disseisitum & ex-  
pulsam ab eodem messuagio, &c. a predicto primo die, &c. usque ad diem cap-  
tionis hujus inquisitionis, cum hujusmodi fortitudine & potentia armata ex-  
tra tenuerunt, & adhuc extra tenent, in magnam pacis dict. dom. regis pertur-  
bationem, ac contra formam statuti in Parliament. domini Henrici, nuper re-  
gis Anglia sexti, anno regni sui octavo tento, in tali casu editi & provisi.  
Ubi nullus eorum, nec aliquis alius cujus statum ipsi aut aliquis eorum ha-  
buerunt, aut habuit, aliquid in eodem messuagio, &c. aut in aliqua inde par-  
cella habuerunt, aut habuit infra tres annos proxim. ante ingress. suum pra-  
dictum, neque alio tempore precedente ad notitiam furator. prad.

Alio modo super Statutum 8. H. 6.

\* Pur le neces-  
sity de ce. part  
vide hic c. 134.  
\* Yet these  
words vi & ar-  
mis, here seem  
to be needlesse,  
being necessa-  
rily implied in  
the word ma-  
nusforti. Vide ant.  
tit. Forcible  
Entry. This  
last clause may  
be omitted.  
\* And yet it  
seemeth not  
best to recite  
the stat. but  
shew the forc-  
ble entry, &c.  
& to conclude,  
contra formam  
stat. in Parl. &c.  
Vide post. tit.  
Indictmen'ts.

**I**urator. pro Domino rege presentant, \* quod cum in statuto in Parlia-  
mento Domini Henrici, nuper regis Anglia sexti apud Westmonast.

anno

anno regni sui octavo tent. edit. inter cetera continentur, Qd. si aliqua persona, sive aliqua persona de aliquibus terris aut tenementis manu forti expulsa seu disseisit, vel pacifice expellatur & postea manu forti extra teneatur vel aliquod feoffement, vel discontinuac. inde post talem ingressum ad jus possessoris defraud. induc. & tollendum aliquo modo fiat, babeat in hac parte pars gravat. versus talem disseisitor assisam, vel per actionem transgressi. Et si pars gravat. per assisam, vel per actionem transgressi. recuperet, vel per veredictum, vel aliquo alio modo per debit. legis formam inveniatur, quod pars defendans inter. ris & tenementis, sic ingressus fuit vel ea per vim post talem ingressum suum tenuit, recuperet quer. dampna sua ad triplum versus talem defend. & ulterius idem defend. finem & redemptionem dicto Domino regi fecerit, prout in Statut. præd. plenius continetur. Quidam tamen W. W. nuper de VV. in com. præd. Husbandman, & G. D. de eadem Labourer, statutum præd. minime ponderant, nec penam in eodem statut. content. aliquam rementes die Febr. anno regni Regis Caroli, &c. apud C. in com. præd. in unum horreum existent. liberum tenement. Roberti W. Decani Ecclesie Cathedralis W. manu forti, ac vi & armis, videlicet, gladiis &c. intraver. & ingressum fecerunt, & præd. Decanum Ecclesie præd. a libero tenemento suo manu forti, ac vi & armis præd. inde sine iudicio expuler. & disseisiver. & L. P. milis. firmar. Decani præd. Horrei præd. ad tunc & ibid. de præd. borreo expulerunt & eiecerunt, & præf. Decanum sic inde expulsam & disseisiam a præd. die Febr. anno supradicti. usque diem captionis huius inquisitionis, de præd. borreo vi & armis præd. & manu forti extra tenuerunt, & adhuc extra tenent, in contemptum dicti domini Regis nunc, & ad grave dampnum ipsius R. & contra pacem dicti domini regis, & contra formam statuti præd. &c.

Another, wherein the Statute is not recited.

**I**nquiratur pro Domino rege, Si A B & C. D. nuper de &c. assumptis eis aliis malefactoribus, & p. cu. Dom. regis perturbatoribus modo guerrino ar. rainat. ad numer. xii. person. quorum nomina ad præsen. jurat. ignor. x. die &c. apud D. &c. (vi & armis, viz &c.) in unum messuag. cum pertin. super pacificam possessione M. L. intraver. & dictum M. a possessione sua præd. expul. & disseisiverunt, & eundem M. sic expulsam & disseisitam a præd. messuagio cum pertin. vi & armis præd. ac manu forti extra tenuerunt, & adhuc extra tenent, contra pacem dicti dom. regis, ac contra formam statuti Dom. Hen. nuper reg. Ang. 6. anno regni sui 8. inde edit. & provis.

Alio modo super statutum, 5 R. 2.

**I**nquiratur pro Dom. rege &c. quod cum in statuto in Parlamento dom. Richardi nuper Regis Angl. secundi post conquestum, apud Westm. anno regni sui quinto tenus edit., inter cetera ordinat. sit, quod nullus faceret ingressum

\*For such recital of the stat. see after in the title Indictments.

ingressum in aliquas terras sive tenementi nisi in casu, ubi ingressus datur per legem, & illo casu non manu forti nec cum multitudine gentium, sed licito & quieto modo tantum; Et si quis in contrarium fecerit, & inde debite convictus fuerit, per imprisonamentum corporis sui puniatur, & penam ad voluntatem domini regis facias, prout in eodem stat. inter alia plenum continetur. Quidam tamen T. H. de L. in comitatu prad. Yeoman & alii &c. Statutum prad. minime ponderant, 2. die Maii, anno regni dom. Caroli, &c. vi & armis, viz. baculis, gladiis, falcistris, & bifurcis in unum clausum I. C. militis jacens apud in com. prad. in quodam loco ibidem vocat H. super possessionem ejusdem I. C. militis, ubi ingressus est, aut eorum alicui non datur per legem ingressus fecerunt, & cent' pericas sepium vivar. ipsius I. militis, adtunc & ibid. crescent' radicaver', evulserunt, & spoliaverunt, in dicti domini regis nunc contemptum, & ad grave dampnum ipsius I. C. militis, & contra formam stat. prad. &c.

Note, that upon Indictments, &c. the Jury be onely charged with the effect of the bill of Indictment, sc. whether the parties be guilty of the Forcible entry (or other fact) or not; And not whether they be guilty, in or under such manner and form as the Indictment or bill specifeth, or not; (sc. not whether it were with staves and swords, &c. which is but matter of form, and must be kept in every indictment, though the parties had neither staffe, sword, nor other weapon.) And so when the Jury say *Billa vera*, they say true as they take the effect of the Bill to be. And if there be false Latine in the bill of Indictment, and the Jury finde it *Billa vera*, yet their verdict is true, sc. as to the fact, and their verdict stretcheth not to the form of words, but to the effect of the matter, and to the fact, so. they are to enquire whether there were any such fact done by the parties, or not: And so though the bill varie from the day, from the year, and from the place, and the Jury finde *Billa vera*, yet they have given a true verdict. Doctor and Student. 162. 163.

And therefore the Justices of peace before whom such Indictments of Forcible Entry, or of Riots, &c. shall be taken, shall do well to inform the Jury that they are bound to regard the effect of the bill of Indictment, or the fact, and not the form.

The Warrant to the Sheriffe for the making of restitution,  
(if the Justice himself will not make it.)

Cantabr.

Johan. Cotton, Miles, unus Just. &c. assignat: Vicecom. ejusdem comit. salutem: Cum per quandam Inquisitionem patria coram me apud B. in Comit. prad. 29. die Julii, &c. super sacramentum A.B.C.D. E.F. &c. ac per formam statuti de ingressibus manu fortis, factis in tali casu provisum, compertum fuit, Quod C.D. &c. & alii, &c. primo die Sept. &c. in quoddam messuag. &c. A.B.



*A. B. & c. in W. prad. vi & armis ingressi sunt, ac ipsum A. B. inde tunc manu forti disseisiverunt & expulerunt, & prad. A. B. sic expulsus a praesent. mess. & c. a prad. primo die Sept. & c. usque ad diem captionis, Inquisitionis prad. manu forti, & com potentia, extra tenuerunt, prout per Inquisitionem prad. plenus liquet de recordo: Ideo ex parte dicti domini regis tibi mando & precipio qd' (ad hoc debite requisitus, una cum posse comitatus tui si necesse fuerit) accedas ad mess. & cetera praemissa, ac eadem cum pertin' rescisire facis, & praef. A. B. ad & in plenam possess. suam inde, prout ipse ante ingress. prad. fuerat seisisus restituui, & missi facias juxta formam dicti stat. & hoc nullatenus omittas periculo incumbente. Teste me praef. Jo. Cotton, & c.*

This warrant to the Sheriffe to make restitution, shall be under the Teste of one of the Justices onely, as it seemeth, *Dyer. 187.*

A Certificate of the presentment, or verdict of the Jury, into the Kings bench (whereof *vide antea tit. Forcible Entry.*)

A Certificate into the Kings Bench, of the Record of a force, viewed by the Just. (whereof *vide antea tit. Forcible Entry*)

These two former Certificates (and the like) may bee done and made by the Just. of peace by way of a \* letter (as it seemeth) inclosing therein the said presentment of the Jury, or the said record of the Just. Except the same be removed thither by a *Certiorari*, and then may the Just. returne them in such manner as appeareth hereafter, *tit. Certiorari*, with some little alteration.

\* See the like *hic ca. 46 fine.*

Or the Justice of peace may himselfe deliver into the Kings Bench, such Presentment found before him, or such Record made by him, & the like, and that without any *Certiorari*: for that he is a Judge of Record. See *hic c. 134.*

*8. Ed 4. 18 Br. Cor. 152 Crom. 143.*

*The forme of the Certificate (or the manner of the Returne) of the writ upon the Statute of Northampton, into the Chancerie.*

Upon the Writ it selfe these words may be indorsed.

*Executio istius brevis patet in quadam schedula eidem brevi consuta.*

The returne.

And the Schedule may be thus.

**E**Go Johan. Cotton, miles, unus Custodum pacis Domini regis in com. Cantabr. certifico in cancellariam dicti Domini regis, quod virtute istius brevis mihi primo deliberati, decimo die Apr. anno, & c. publice proclamari (ex parte dicti Domini Regis) feci, apud B. cujus in dicto brevi fit mentio, prout in dicto brevi precipitur, Et qd' quidem A. C. & D. E. de F. in Com prad. Labourers, prad' proclam' parvispender', post proclamationem pradicti ibid. sic fact', armati iverunt, ac armat' potentiam ibid' duxerunt, sc. duas galeas, unum arcum & decem sagittas, duos gladios, & totidem pugiones, in perturbationem pacis dicti dom. Regis, ac terrorem populi sui, necnon in contemptum stat. in dicti brevi specificati manifestum. Ac proinde dicti. A. C.

The certificate.

D. E.

D. E. una cum armaturis suis pred' arrestavi & eorum corpora ad prox' prisonam dicti dom. regis in com. pred. duci feci, ibidem moratur' donec aliud a dicto domino rege pro ipsorum deliberatione habuero in mandatis. Armaturas etiam eorum pred. apretiari feci, per A. B. C. D. & E. F. de B. pred. Yeomen, ad hoc juratos, Qui dicunt super sacrament' suum pred', quod pred. due galea valent decem solid', Et quod dict. arcus et decem sagitt' valent sex solid', Et quod gladii pred. valent viginti solid', Et quod dict. pugiones valent quinq; solid', & sic armatura pred. valent in toto quadraginti & unum solid', de quibus paratus sum respond. re secunda tenorem dicti brevis. In cujus rei testimonium huic present' certificationi mea sigillum meum apposui, dat' apud pred. die & anno supradictis.

Jo. Cotton.

The forme of a Certificate to be made by him which shall take the oaths of a Justice of peace, by Commission or *Dedimus potestatem*.

Upon the Commission (or *Dedimus potestatem*) indorse theſe (or the like) words.

*Executio istius brevis patet in quadam schedula huic brevi annexa*.

And the Certificate may be thus.

**F** Go M. D. in Cancellaria Dom. regis certifico, me virtute brevis dom. regis, huic schedul' annexat' x. die mensis Decemb' Anno regni dicti dom. regis Iac' Dei gratia regis Ang' & c. 19. et Scotia, 55. apud Westwratting in com' Cant. Recepiſſe sacram' Iohan' Miliscent milit' (in brevi pred. nominat') tam de officio custod pacis dict. dom. reg. in dict. com. Cant. bene et fideliter faciend. juxta form. m. schedul' brevi pred. annex. Quam sacram' specificat in actu Parliam. An. reg. dom. Eliz. nuper regina Ang' primo fact': secundum tenor' brevis et schedula. brevi pred. similiter annex': et in omnibus prout in pred. brevi precipitur. In cujus rei testim', & c.

M. D.

Riots. CAP. I 30.

The forme of the Record of a Riot, viewed by the Justices, and Sheriffe, or Undersheriffe.

Cantabr.

**M** Emorand. qd' vicesim' die Ian'. Anno Regni Domini nostri Caroli Dei gratia, & c. Nos Johan' Cuts Miles, & Johan' Cage Miles, duo Iust' dicti dom. regis ad pacem in com' pred. & c. assign' & Willielmus Wendy Miles, adtunc vicecom' ejusd. com', ad gravem querim' et humilem petition' A. B. de C. in dict' com' Yeoman in propriis personis nostris accessimus ad domum mansional. ipsius A. B. in C. pred. adtunc & ibid. invenimus D. E. F. G. et H. I. de C. pred. Laborers, ac alios malefactores & pacis dicti dom. regis perturbatores ignotos (ad numerum decem person') modo guerrino arraiatos, viz. gladiis, pugionibus, galeis loricis, arcibus, et sagitt', illicite et riotose aggregatos et eandem domum obsidentes, multa mala in ipsum A. B. comminantes, in magnam pacis dicti dom. regis perturbationem, ac populi sui terrorem, & contra formam stat' in Parlamento dom' Henrici nuper regis Angl'.

*Angl' quart', anno regni sui decimo tertio tento editi & provisi, ac propterea nos prefati Johannes Cutts, Johannes Cage, et Willielmus Wendy, prad. D.E.F.G.H.I.&c. tunc et ib. arrestari, ac prox' gaole dicti dom' regis in com' prad. duci fecimus, per visum et recordum nostrum de illicita congregatione et riota prad. convictos, ibid. moraturos quousque finem dicto dom' regi proinde fecerint. In cujus rei testim' huic present recordo nostro sigilla nostra apposuimus, Dat' apud C. prad. die et anno primo suprad'.*

And if a man be slaine or maimed, or a rescous be done to the officer by the Ryottors, then the Record ought to be *riotose occiderunt*, or *riotose mahimaverunt*, or *riotose rescusserunt*, but not *felonice*, nor simply *rescusserunt*, because their authority is in this case restrained to the ryot onely: so as notwithstanding that record, the parties may plead, Not guilty, to the felony, or to the rescous, howsoever for the ryot they are estopped.

Lamb. 312.

The *Mittimus*, for conveying the ryotors to the gaole, may (with some few words of change) be made out of that, which is here before, for such as hold by force. See hercof paulo ante, amongst the *Presidents*, in *Forcible Entry*. The Precept (to the Sheriffe) to returne a Jury, for an Inquiry upon a Riot.

Mittimus.

**J**ohannes Cutts, Miles, & Johannes Cage, Miles, duo Justic' &c. assignat' vicecomit' ejusdem comitatus salutem. Ex parte dicti domini Regis tibi precipimus, quod venire facias coram nobis apud I. in comitatu predicto die Ianuar' prox. futuro 24. probos, suffic', et legal' homines de comitatu predicto, quorum quilibet habeat terras et tenementa, infra dict' com' liberi tenementi per chartam, ad annum valorem viginti solidor', aut per copiam Rotul' Curia ad annum valorem vigintisex solid' et octo denarior' aut per utrumque ultra omnes reprimas; ad inquirendum pro dicto Domino rege, ac pro indemnitate nostra in hac parte, super sacrament' suum de quibusdam illicitis aggregationibus et riotis apud C. in comitat' prad' nuper commissis ut dicitur. Et hoc nullatenus omittas sub pena viginti librar', quam incursumus es, si in executione premissor' defeceris. Et habeas ibi tunc nomina Iuratorum predictorum, et hoc preceptum. Dat' sub sigillis nostris die Ianuaris, anno regni dict' domini nostri Caroli, &c.

Cantabr.

The forme of the Inquiry, Indictment, or Presentment of the Jury.

**I**nquisitio pro dom' rege, &c. (as before in *Forcible Entries*) coram Johanne Cutts, milite, et Johanne Cage milite, duo Justic', &c. Qui ad hoc jurati et onerati, dicunt super sacrament' suum prad', Quod D.E.F.G. & H. 7. de S. in com' prad. Laborers. simul cum aliis malefactoribus, et pacis dict' dom' reg' perturbatoribus ignotis (ad numerum sept' person') modo guerri- no arraiata, vi et armis, viz. hawberdis, gladiis, arcubus et sagittis, die mensis Ian' ultim' praterito apud C. in comitatu predicto, inter horas octavam & nonam post meridiem ejusdem diei, domum mansionalem A. B. de C. predict.

Cantabr.



Yeoman sciunt in C. præd' riotose fregerunt & intrav' & in ipsum A.B. tunc & ibid. insultum fecerunt ac ipsum tunc et ib' verberaverunt, vulneraverunt, & indignis modis tractav', ita quod de vita ejus desperabatur, in magnam pacis dict' dom' reg' perturbationem & pop' terrorem, ac contra formam stat' de riotis, routis, & congregac' gentium illicitis in Parliam' Dom' Hen. nuper regis Ang' quarti. an. regni sui decimo tertio tento provisi & editi.

Note that all Indictments of Riots, or forcible entries &c. taken before Justices of P. must be after this forme, sc. *inquisitio, &c. capta, &c. coram I.C. & R.T. &c.* (if out of the Sessions; or if at the Sessions, then *Coram I.C. & sociis suis*) *Iustic' Dom' Regis ad pacem in dicto Comitatu conservand. Necnon ad diversas felonias, &c. Qui, &c. ut hic in Forcible Entries. Vide etiam hic cap. 134 sine.*

Alias.

**I**nquisitio, &c. qui dicunt &c. *Qd' A.B.C.D. & E.F. de &c. aggregati eis quam pluribus aliis malefactoribus, et pacis dom' regis perturbator' ignotis ad numer' sex person' modo guerrino arrati per instigationem & procuracionem I. S. 3. die Sept' anno, &c. vi et armis, viz. gladiis, baculis, & aliis arm' tam invasivis quam defensivis apud Ab. Mag' in com' Cant': injuste, riotose, et routose assemblaverunt, clausumque W.H. milit' apud A. præd. adiunc & ib' injuste fregerunt et intraver' & decem pertic' sepium vivar' ipsius W.H. militis adiunc et ibid. crescent' eradicaver', evulserunt & spoliaverunt, ad grave dampnum ipsius W.H. Ac contra pacem dict' dom' regis et contra formam diversor' stat' in hujusmodi casu editor' et provisor.*

Alias.

**C**lausum Willihelmi H. (apud F. or vocat', &c.) infra paroch' de Ab. magna in com' præd. riotose fregerunt et intrav' ac sepes et clausum præd. W.H. ad numerum sex cent' ped. adiunc et ib' existent' laceraverunt, irrumper' et postraver' ad grave dampnum, &c. Ac contra pacem, &c.

Alias.

**A**C foss, ibid. existent', adiunc et ibid. cum ligonibus, et bipalliis foderunt, planaverunt et impleverunt, ad grave dampnum &c.

Alias.

**C**lausum, &c. injuste freger' et intraver' et sex acras tritici adiunc et ib' crescent' valoris &c. de bonis et catallis W.H. præd. adiunc et ibid. invent' injuste, riotose, et routose, messuerunt, falcaverunt, et asportaverunt, ad grave dampnum &c.

Alias.

**Q**uoddam clausum vocat' &c. cuiusd. R.T. armig' freger' et intraver' ac herbas ipsius R.T. adiunc et ib. crescent' cum quibusd. averiis non solum depast' fuer' conculcaver' et consumpsit. Sed etiam præd. clausum cum equis et aratro araver' et subvert'. Ad grave dampnum, &c.

Alias.

Quick  
hedges  
destroyed.

Hedges  
cut or pul-  
led up.

Ditches  
cast down.

Cutting &  
carrying  
corne.

Trespas-  
&c.

## Alias.

**D**Omum cuiusd. I. S. apud, &c. fruger' & intrav' ac bona & catal. pred. I. S. ad valent' x. li. in domo sua prad. ad tunc invent' riotose ceperunt, spoliaver' & asportaver' ac cistas ipsius I. S. in domo sua prad. tunc existenti' riotose fruger' & sex coclear' argenti' ad valent' 40 s. de bonis & catal. ipsius I. ad tunc & ibid. invent' riotose ceper' & asportaver' ac bordem ipsius I. S. tunc & ibid. in horeo suo invent' riotose ceper' & spoliaver' & asportaver' Ad grave dampnum, &c.

Houfebro-  
ken, and  
goodsta-  
ken away.

As for the Certificate (which ought to be made to the King, and the Councel, in case that by this inquiry, the truth of the fault, and Ryot be not found) such Certificate may be done in English, by way of a letter, comprehending the truth of the whole matter, with the certainty of the time, place, and other circumstances of the fact or ryot, together with the certainty of the names of the Rioters; as also of the names of such, who by maintenance, embracery, or otherwise, were any impediment to the finding thereof, with their severall misdemeanors: which Certificate or letter is to be directed and sent by the said Justices of peace and Sheriff, or Undersheriffe, into the Starre-Chamber, or Kings bench, &c. within one moneth. See *Antea*, tit. *Ryots*.

Certificat.

Br. P. em. I.

A Traverse to an Endiement of a Riot, and the Record thereupon.

**A**lias. sc. ad Sessionem pacis tentam apud Castrum Cantabr. in com' Cantabr. prad. die Martis proxim' ante Festum Sancti Mathai Apostoli anno The stile of the session. regni Domini nostri Caroli Dei gratia, Anglia, Scotia, Francia, & Hibern' Regis fidei Defensor, &c. coram & aliis sociis suis Iusticiar' dicti Domini regis ad pacem in comitat' predict' conservand. nec non ad divers. felon' transgr', et alia malefacta in eod. com' perpetrata audiend. & terminand' assign' per sacramentum duodecim Jurator' extitit presentatum quod I. L. de &c. R. M. de, &c. & T. L. de, &c. cum diversis aliis ignotis malefact' et pacis dicti Domini regis perturbatoribus, modo guerrino arraiato, uniti et assemblati vicesimo die Julii in nocte ejusdem diei, anni, &c. vi et armis viz. baculis, gladiis, clypeis, pugionibus, falcastris, et aliis armis, tam invasivis, quam defensivis, apud C, &c. riotose, et routose frugerunt et intraverunt, et octo plaustra fœni ad valent', &c. ad tunc et ibid. existent', de bonis et Butallis dicti ad tunc et ibid. injuste et illicite ceperunt et asportaver, contra pacem dicti dom' regis. &c. Et contra formam stat' inde editi et provisi per quod praecept. fuit vic' Com' quod non omitteret, &c. quin venire faceret eos ad respondend. &c. postea q; sc. prad. die Martis prox' ante festum sancti Mathai Apostoli anno supradicto coram praef. Iustic' venerunt prad. I. L. R. M. & T. L. in propriis personis suis, et habito audito indiementi prad. separati dicunt, quod ipsi non.

The in-  
dictments.

Proccesse  
ad respon-  
dend.

Traverse.  
Jury.

Day given.

The verdict

The judge-  
ment.

Cap. pro fine.

Ponunt se in  
misericordi-  
am Regis.  
Fine affec-  
ted.

sunt inde culpab. et de hoc ponunt se super patriam, Et A. M. qui pro dom' rege in hoc parte sequitur similis &c. Ideo veniat inde jurata coram Iustic' dict'.  
dom. regis ad pacem in com. pred. conservand. assign., &c. ad Sessionem pacis apud &c. die Martis prox. post Epiphaniam dom. tunc prox. futuro tenend. Et qui &c. ad recogn., &c. quia tam &c. idem dies datus est tam pras. A. M. qui sequitur, &c. quam pras. I. L. R. M. et T. L. &c. ad quas quidem sessiones, tent. apud pred. in com. pred. &c. coram Dom. T. P. G. N. et H. P. milit. et sciiis suis Iustic. dicti dom. regis ad pacem in com. pred. conservand. Nec non ad divers. felon. transgr. et alia malefacta in eod. com. perpetrata audienda et terminand. assignat; venerunt tam pras. A. M. qui sequitur, &c. quam prasati I. L. R. M. & T. L. in propriis personis suis, Et Iurator' pras. per vicecom' com' predict' ad hoc impannellati et exacti, viz. I. F. IG. &c. similiter venerunt, qui ad veritatem de premiss. dicendam triati et iurati, dicunt super sacramentum suum, qd' pras. I. L. R. M. & T. L. culpabiles sunt; et eorum quilibet culpabilis est de transgress, contemptu, et rioto predictis in indictamento predict' superius specificatis, modo et forma prout superius vers. eos supponitur, Ideo concessum est per Curiam qd' pras. I. L. R. M. & T. L. capiantur ad satisfaciend' dict' Dom. Regi de finibus suis occasione transgress. contemptus & riotti pras. Qui quidem I. L. R. M. & T. L. ad tunc et ibid' presen' in cur' petierunt se ad finem cum dict' Dom. Rege occasione pras. admitti. Et inde ponunt se separatim in misericord. Dom. Regis & assessatur finis ejusdem I. L. per Iustic. pred., ad tres lib. sex solid. octo denar.; Et finis ejusdem R. M. assessatur ad vigint. solid., et assessatur finis ejusdem T. L. ad quinque libr., bona et legalis moneta Anglia, ad opus et usum dicti Domini Regis.

I have inserted this former president, for that it discovereth much matter worthy the Justices observation.

### Indictments. CAP. 131.

**F**Or the forme of indictments, in cases of Forcible Entry and Riots, I have here before set you down certain Presidents; nevertheless for that these indictments be the chiefe foundation whereupon the whole businesse and tryall is after to be grounded and built. I thought it not amisse to observe here these few generall rules, as well concerning the matter, as the form of these and all other indictments or presentments, to be taken before Justices of peace.

First, in these indictments of Forcible Entry & Riots, (as also in all other indictments of felony or Trespasse) it is good to say *contra pacem*, or other words to that effect.

Also



Also these words, *vi & armis*, viz. *gladiis*, &c. are not of necessity, yet it is good to use them, especially if the circumstances of the fact doe require them; for these circumstances doe either aggravate or diminish the offence. *Stamf. 94.*

But these words, *vi & armis*, &c. are needlesse in an Indictment of Forcible Entry, because they are implied in the word Force.

Yet note that in all Indictments of Treason, Murder, Felony, or Trespases, these words, *vi & armis*, are necessary to be put in: (Otherwise it seemeth of offences which are *contra pacem tantum*, as Conspiracies, Deceits, Slanders, escapes for Debt, and the like.) *Finch.*

Also in Indictments found upon Statutes, it is not needfull, nay, it is not safe to recite the Statute at all: for as the recitall is not necessary; so the mis-recitall thereof in the matter, or in the yeer, day, or place, is fatall to the Indictment, and maketh it void: But it is safe and sure to draw the Indictment with this conclusion, *sc.* *Co. 4. 48.*

*Contra formam statuti in huiusmodi casu provisi ac editi.* If the Indictment be founded upon one Statute: or, *contra formam diversorum statutorum in huiusmodi casu editi. & provisor.*, without naming any speciall Statute, where many Statutes do concern one offence. *Crompt. 104.*

Yet the offence against the Statute, must be certainly described in the Indictment, and the Substance, and materiall words in such Statute must be fully set down therein. *Plow. 1. & 79. Lamb. 485. Co. L. 98. b.*

Also all Indictments and presentments (being in the nature of Declarations for the King against the offenders) ought to contain certainty, and shall not be supplied or mayntained by implication, intendment, or argument, *Co. 5. 120. Plow. 84. 122.* and therefore six principall things bee most commonly requisite in all presentments before the Justice of Peace, viz. *Lamb. 489. &c. Br. Indictment. 6. 24. 34. 46. & 47. Stamf. 96.*

1 The names, and surnames as well of the parties indicted, as of the parties offended, with the addition of the degree or mystery, and the dwelling place of the party indicted, (*sc.* both the Towne, and County.)

Yet in some cases, an Indictment, *quod procuravit personas ignotas*, or *quod bona cujusdam ignoti cepit*, &c. or the like, may be good. See *plus. Lamb. 470. 476. Br. Indictment 6. 10. 11. Dyer 99. & Plow. fol. 85. b.*

2 The time, *sc.* the day and yeer when the offence was done.

3 The place, *sc.* the Towne and County, where it was done, as at B, in the County of C. *Br. Indictment. 14. 47. 48. Lamb. 476.*

4 The name or quality of the thing, in which the offence is committed; viz. of dead things, it may be, *bona et catalla*, expressing them

cer.

certainly : of live things *equum, bovem, ovem*, &c. But not *bona & catalla*. So of entry, &c. into lands, &c. to expresse certainly, whether it be a house, land, meadow, pasture, wood, &c.

5 Also the value or price of the thing is commonly to be set down, to aggravate the fault.

*Lamb. 480.* 6 The manner of the fact, *sc.* the manner and nature of the felony, or trepasse. See *Lamb. 480. Br. Indict. 7. 36.*

And yet for the forme of Indictments, the Jury are not strictly tyed thereunto (*sc.* to the day, yeer or place, &c.) but chiefly to the matter of fact. *Vide hic, cap. 129.*

*Verity.* Also Indictments ought to be framed so neer the truth as may be, and the rather, for that they are to be found by the Jury upon their oaths. *Co. 9. 119. Pl. 84.*

*Co. 4. 47.* Yea, an Indictment, being *verdictum, id est, dictum veritatis*, and a matter of record, ought to set forth all the truth, that by Law is requisite; for *de non apparentibus, & non existentibus eadem ratio*: And every part of the Indictment materiall ought to be found by the Oath of the Jurors, and is not to be supplied by averment; otherwise the Indictment will be insufficient.

But false Latin shall not make void an Indictment. *Co. 5. 121.*

And to this purpose note, that false Latin may be said to be of three sorts.

First, words of Art, being words significant allowed by our Law, and known to the Sages of the Law, although not allowed by the Grammarians, nor having the countenance of Latin: As *Messuagium, Toftum, garden, brueria, muredred, burglariter, felonice*, &c. these and the like are words of Art, and are allowed in our Law, yea, the Civilians and Physicians do use the like: And every science have their *vocabula artis*.

The second sort are false writing or incongrue Latine, as *viginti* for *vinginti*, *septinginti* for *septinginta*; *prefato* for *prafate*, &c. these two former sorts shall not avoid, or make void any Indictment, Grant, or Deed.

The third sort are words insensible, especially if the words of art are written insensibly or falsely, as *muredredum* for *murdredum*, *burgariter* for *burglariter*, *feloniter* for *felonice*: These words *muredredum, burgariter, & feloniter* (being no Latine words, nor allowed by Law as words of art) if they shall be in any place or point materiall, they do make void the Indictment: except where such words insensible be surpluse. See *Co. 4. 39. 42. & 5. 121. & 10. 133.*

And yet *quare*, for these words have the countenance of those other words

words of art, and doe shew to the court sufficiently what is thereby meant, and seeme to be onely the false writing of the Clerkes, and therefore might be amended in case of an Enditement. See *Cok. 10. 133.*

## Processe. CAP. 132.

*The formes of Processe (upon Indictments of Trespasse) which also the Justices of Peace out of their Sessions may in some few cases make out against offenders.*

**N**Ote, that as the authoritie of making processe upon Indictments, is given by expresse words in the Commission, to the Justices of Peace in their Sessions; so is it given by expresse words, in some Statutes, to the Justices of Peace, (yea to one Justice of Peace) out of their Sessions to make out Processe, upon Indictments found (before them) against offenders; or upon information against them, as if they were indicted of Trespasse in Sessions, as you may see here *tit. Forcible Entry, et tit. Sheriffes antea.*

Also in some other cases, and by some other Statute this authoritie of *Lam 317.* making out Processe (against offenders) by the Justices of Peace out of their *501.* Sessions, seemeth to bee implied of congruence, or rather of necessitie; as where any Statute doth give power or authoritie to the Justices or Justice of Peace, out of their Sessions, to enquire, heare, and determine (as *hic tit. Ryots, tit. Transportation, tit. Tyle. et tit. Weights.*) In these, and in all other such cases, where the Justices may enquire, heare, and determine, there, after indictment or presentment of the offence, the said Justices may make out Processe against such offenders, to cause the offenders to come and answer; for unlesse the offenders doe come in, either *gratis*, or by processe, the Justices cannot proceed to heare and determine. Againe, in the former cases of transportation, Tyle, and Weight, as also in all other cases, where any Statute doth give power to the Justices of Peace out of their Sessions, to heare and determine, either upon the confession of the offenders, or upon examination of the Witnesses, (whereof see *antea, tit. Heare and determine, &c. cap. 66.*) In all such cases, it seemeth the Justices of Peace may grant out their Processe or Warrant against such offenders, to appeare before them, to answer to their said offences: And thereupon may proceed to examine, heare, and determine the offence, as being convicted thereof upon such confession or examination, without any Indictment or Processe.

The difference betweene Processe, and the Precept or Warrant of the Justices of Peace, seemes to be this:



The precept or warrant of the Justice is only to attach and convent the party before any indictment or conviction, and may be made either in the name of the King, or of the Justice, as is before shewed.

Processe is alwayes in the name of the King, and usually after an Indictment found, or after other conviction.

*Now these Processe seeme to be as followeth.*

1. *Venire fac.*

2. *Distingas, or Capias.*

**F**irst, if the offender be absent, a *Venire facias* shall be awarded by the Justice or Justices of Peace, under his or their owne *Teste*: And if thereupon the offender be returned sufficient (and maketh a default) then a *Distingas* is awarded, which *Distingas* shall goe forth *infinite*, till the offender come in: But if a *Nihil haber*, &c. be at the first returned, then after the *Venire facias*, a *Capias*, then an *alias* and after a *Pluries* shall goe forth, and after that an *Exigent*, till the party be taken, or yeeld himselfe, or else be outlawed.

And these are the ordinarie Processe upon all Indictments of Trespasse against the Peace, or of other offences against penall Statutes, not being felony, or a greater offence, (if it be not otherwise ordained by statute.) But this processe is commonly grounded upon an indictment, and is onely to cause the offender to come in, and to make his answer; and therefore if the offender be present, and confesse such Indictment, information, or offence, then needeth there no Processe at all, for he shall be forthwith committed to prison (commonly) there to remaine untill he hath paid his fine, or given sureties for it. 1. H. 7. 20. & Br. Imp. 100.

Also these Processe shall be alwayes directed to the Sheriffe (who is the immediate minister and officer of the King, to execute all processe) except the Sheriffe himselfe, or his officers be parties: but if the Justice of peace be to grant out processe against the Sheriffe, Under-Sheriffe, or their officers, offending contrary to the stat. 8. H. 6. cap. 9. or 11. H. 7. cap. 15. which you may see here before, it seemeth such Processe shall be directed to the Coroners of the County, and shall be served by them; and so are divers books, as 2. H. 6. 12. 8. H. 6. 30. 9. H. 6. 11. & 18. Ed. 4. 7. and others, And so also the oath of the Just. of P. seemeth to bind them.

Br. Franch.  
38.

Note also, that this processe ought alwayes to be made in the name of the King: and for that the King is a partie, it must also be with a *Non omitas propter aliquam libertatem* &c. But the teste thereof may be under the name of the Justice of peace.

If the offender be within any Liberty or Franchise, the Sheriffe is to entree the Franchise, and to execute the processe himselfe, (and not to write to the Bailife of the Franchise, because the King is a partie.) See 41. Ass. 7. Br. Franch. 18. 31.

The formes of theſe proceſſe, to be made by the Juſtice of Peace, out of the Seſſions, ſeeme to be as followeth.

The *Venire facias* thus.

**C**arolus Dei gratia Anglia, Scotia, Francia, et Hibern. Rex fidei deſenſor, &c. vic' com' Cantabr' ſalutem. Pracipimus tibi, qd' non omittas propter aliquam libertat' in balliva tua, quin venire fac' A. B. de C. in dicto com. tuo Yeoman, coram R. M. milite et M. D. armig' duobus Juſtic' noſtr' ad pacem conſervand. Nec non ad diverſ. felonias, transgreſſ. & alia malefacta in dicto com' perpetrata audiend. et terminand. assignatis, apud Lynton in com. tuo die Maii prox' futur' ad respondend. nobis super quibusdam articulis super ipſum A. B. preſentatis, & habeas ibi tunc hoc preceptum. Teſte R. M. & M. D. apud Lynton die &c.

The *Diſtringas* thus.

**C**arolus Dei gratia Anglia, Scotia, Francia, et Hibern. Rex, fidei deſenſor, &c. vic' com. Cantab. ſalutem. Pracipimus tibi qd. non omittas propter aliquam libertat. in balliva tua, quin eam ingrediaris et diſtringas A. B. de C. in com. tuo Yeoman, per omnia terras et tenement, &c. Et quod de exitibus eorum reſpondeas. &c. Et quod habeas corpus ejus coram, &c. Juſtic', &c. ad respondend, &c. Teſte, &c.

The *Writ of Capias* thus.

**C**arolu: Dei gratia Anglia, &c. vic' com' Cant. ſalutem. Precipimus tibi quod non omittas propter aliquam libertat. in balliva tua, quin cum ingred' et Capias I. D. de A. in com. tuo Yeoman &c. ſi invent. fuerit in balliva tua, et cum ſalvo cuſtod. fac'. Ita quod habeas corpus ejus coram R. M. milite, et M. D. armig. duobus Juſtic. noſtris ad pacem conſervand. Nec non ad diverſ. feloniam, transgr. et alia malefacta in eodem com. tuo perpetrata. audiend. et terminand. assign. apud L. in com. tuo die Martii prox. futur. ad respondend. nobis de diverſ. transgr. contempt. et offenciis de quibus ipſe indiſtat' exiſtit: Et habeas ibi tunc: hoc breve, Teſte R. M. & M. D. apud Lynton ſexto die Ia. &c. anno regni noſtri, &c.

Ad quem diem Willi. Imus Wendy, miles, vic. com. pred. retorn. quod ipſe non eſt inventus in balliva ſua, et ipſe non venit. Ideo preceptum eſt ſicut alias. &c.

The *Capias alias*.

**C**arolus, &c. vic. &c. Pracipimus tibi ſicut alias tibi precipimus, quod non emittas; &c. verbatim ut ſupra.

Ad quem diem, &c. ut ſupra, et ipſe non venit. Ideo precept. eſt vic. ſicut pluries, &c.

The party may appeare gratis, and ſo avoid the attachment or arreſting of his body; and that is the cauſe that the entry is made, & ipſe non venit.

The *Pluries Capias*.

**C**arolus, &c. vic. &c. salutem precipimus tibi sicut plur. tibi precipimus, quod non omittas; &c. ut supra.

Ad quem diem Willielmus Wendy Miles, Vicecom. prad. retorn., quod prad. C. D. non est inventus in, &c. et ipse non venit, Ideo pracept. est quod exigi facias, &c.

## The Exigent.

**C**arolus, &c. vic., &c. salutem precipimus quod exigi fac. C. D. de A. in Comitatu tuo Yeoman, quousque secundum legem et consuetudinem regni nostri Angliæ, utlagatur si non comparueris & si compar. tunc eum capias et salvo custodir. fac., Ita quod habeas corpus ejus coram R. M. Milite, et M. D. duobus Justic. ad pacem nostram conservand. Necnon ad divers. felon. transgr. et alia malefact. in eodem Com. tuo perpetrat. audiend. et terminand. assignat. apud L. in Com. tuo die Sept. prox. futur. ad respond. nobis de diversis transgr. contempt. & offensis de quibus ipse indictatus existit, et habeas ibi tunc hoc breve, teste R. M. et M. D. apud L. octavo die Septemb. anno regni nostri, &c.

Ad quem diem Willielmus Wendy Miles, Vic' Com. prad. retorn. quod ad Com. tentum apud Cantabr. die anno regni Dom. Regis nunc, &c. Et sic ad quatuor alias Com. tunc prox. sequent. ibid. tent. prad. C. D. exactus fuit, et non comparuit, Ideo utlagat. fuit.

Lamb. 303.]

These Processes are sent out, to the end, that either the party shall come or be brought in to make his answer, and to be justified by the Law, or else that (for his contumacy) hee shall be out-lawed, and so to be deprived of the benefit of Law: but the power of the Justices of Peace endeth with the utlary. for they can make no *Capias Utlagatum*, but must certifie the utlary into the Kings Bench.

Lamb. 308.

Also all such Processes (as well of *Capias*: &c. as of utlary) may be stayed by a *Supersedeas* issuing from other Justices of Peace (out of Sessions) testifying that the party hath come before them, and hath found sureties for his appearance to answer to the Indictment, or to pay his fine, &c. See before.

The Com. mission.

14. H. 7. 8.

By. peace 6. 7.

Note that this authority of the Justices of Peace, in sending out the processes (being out of their Sessions) is beyond the bounds of their Commission. And again, by the Commission, one Justice of Peace alone cannot grant a *Capias* nor other Process, but two Justices of Peace at the least must do it, and that sitting the Court, and in their Sessions; and yet nevertheless, in these former cases, the Statutes (expressly, or by necessary implication) giving such authority to the Justices of Peace, or to one Justice alone, and that out of the Sessions, are a sufficient Warrant and Commission to the Justice of Peace therein, as it seemeth.

Tra-



## Traverse. CAP. 133.

**A**fter that such Proceſſe (or other Proceſſe *ad reſpond.*) be awarded a-  
gainſt the party, it ſeems he may come in and yield himſelf to pay his  
fine: or elſe he may offer his Traverse to the Indiſtment found againſt him  
before the Juſtices of Peace, and the Juſtices ought to allow him his Tra-  
verſe againſt it; which Traverse is to take iſſue upon the chiefe matter of  
the Indiſtment, or to deny the point of the Indiſtment. Lamb. 513.

But although the Juſtices of Peace have power in ſome caſes as aforeſaid  
(out of their generall Sessions) to take Indiſtments, and after ſuch Indiſt-  
ment found to award Proceſſe *ad reſpondendum* againſt offenders, and to  
heare and determine thereof; and the offenders alſo have liberty to come in,  
and to ſpeak, and may answer for themſelves, and may offer their Traverse,  
and that the Juſtices of Peace are to allow of, and to receive the ſame; yet  
*quare* whether the Juſtices of Peace (out of their generall Sessions) may try  
ſuch Traverse being tendred to them, without which triall all the reſt may  
ſeem idle (*vide hic c. 84. fine.*) Or that upon the Traverse tendred, they muſt  
certifie or ſend the inquisition or Indiſtment ſo found before them, into the  
Kings Bench, or unto their Quarter or generall Sessions of the Peace, there  
to be tried and determined: howſoever it is ſafeſt (after ſuch Traverse tend-  
red) to certifie or deliver ſuch inquisition or Indiſtment into the Kings  
Bench (or to their next Quarter Sessions, and ſo to referre the triall of the  
Traverse, and further proceedings therein to them. See hereof *ſtr. Riot, and*  
*Forcible Entry.*

See Lamb.  
521, 523.

## Certiorari. CAP. 134.

*The return of a Certiorari, ſent to remove an Indiſt-  
ment, may be thus.*

**F**irſt, upon the backſide of the Writ of *Certiorari*, indorſe theſe, or the  
like words.

*Executio iſtius brevis patet in quadam ſchedula eidem  
brevi annexa.*

And that Schedule may be thus.

**E**go Michael Dalton, unus custodum pacis, ac Iuſticiar. Dom. Regis. ad  
pacem in dict. Com. Cantabrig. conſervand. necnon ad deſenſas felonias,  
transſer. et alia malefacta in eodem Com. perpetrata audiend. et termi-  
nand. assignator. virtute iſtius brevis mihi deliberari indiſtamentum illud (un-  
de in dicto brevi ſit mentio) una cum omnibus idem indiſtamentum ragentibus,  
in Cancellar. dicti Domini Regis, diſtincte et aperte ſub ſigillo meo certifico. In  
cujus

*cujus rei testimonium ego præs.* M.D. *his præsensibus sigillum meum apposui.*  
*Datum apud West. die mensis Anno regni, &c.*

Then take the Record of the Indictment, and close it within the Schedule and seal, and send them up both together with the *Certiorari*.

Now to shew what is further meet for the Justice of Peace to know, concerning this Writ of *Certiorari*, and their certifying or Returne thereof.

After an Indictment found before Justices of Peace, a *Certiorari* is procured by the meanes of some party indicted or grieved, thereby to remove such Indictment from the said Justice, and to conveigh it to Justices of a higher authority, to the end the party may either Traverse such Indictment above, or may there avoid it for insufficiency of forme or matter.

And this *Certiorari* is the Kings Writ, issuing sometimes out of the Chancery, and sometimes out of the Kings Bench, and may be directed to any Court of Record, or Officer of Record (as to a Justice of Peace, Sheriff, Coroner, or Escheator) to be certified of any Record, which is before any of them: and first an *Alias*, then a *Plur'*, and lastly, an *Attachment* lieth against them that should send it (if the Record be not certified accordingly) or it seemeth a *Subpœna* is used at this day.

If it be returnable into the Chancery, then are the words, *In Cancellaria nostra*; and if into the Kings Bench, then the words are, *Nobis mittatis*; and if into the Court of Common Pleas, then *Coram Iusticiariis nostris de Banco*.

*Fitz 245.b.* The *Certiorari* may be sometimes to remove and send up the Record it self, and sometimes but onely the Tenour of the Record (as the words therein be) and it must be obeyed accordingly.

*Pl. 393.* If there be variance between the *Certiorari* and the Record which is to be removed, the Justices need not to certifie such Record, *Lamb. 500.*

*Crompt. 132.*  
*a & 133.b.* A Justice of Peace may deliver, or send into the Kings Bench, an Indictment found before him; or a Recognisance of the peace taken by him; or a force recorded by him, without any *Certiorari*: but if a Just. of Peace having a Record in his hands, be discharged of his office, now he cannot certifie it without a *Certiorari*, although he be made a Justice of Peace againe. See 8 *H. 4 f 5. Br. Record 64.*

*6 Ed. 4. 5.* If a *Certiorari* be to send up the Indictment of A. in which Indictment some others be indicted together with the same A. yet need not the Justice of Peace to make certificate concerning any but A. For although they be named jointly, yet be they indicted severally, and the King may pardon A. without forgiving the other. *6 Ed. 4. 5.*

If a *Certiorari* shall come to the Justices of peace to remove an indictment, and the party sueth not to have it removed; but suffereth it to ly still after the day of the returne of the *Certiorari*, yet it seemeth the Justices of Peace ought (*ex officio*) to send it away, becaule the writ containeth in it selfe a commandement to them so to doe; and so is a *Superfedeas* of it selfe to the Justices of peace, to stay their other proceedings. See *antea*, *tit. forcible entry*. 6 H 7. 16.  
Br. Iudg 17

And yet by others, the Justices may proceed upon the Indictment. *Vide Cromp. 132, 133, & 166. Dyer 245.*

And albeit the *Certiorari* be a *Superfedeas* of it selfe, yet may the party upon the *Certiorari* purchased, have a *Superfedeas* also, directed to the Sheriffe, commanding him that he arrest him not, upon that record before the Justices of peace, *Fitz. fol. 237.* In which place also he doubteth whether the Justices of peace themselves ought not of duty to award their owne *Superfedeas*, to the same effect, after that the writ of *Certiorari* is brought to their hands. Lamb 497.  
Fitz N.B.  
237. c.

If a *Certiorari* come to the Justices of peace to remove an inditement, & in truth the indictment was not taken till after the date of that *Certiorari*, yet if the inditement be removed thereby, it is good enough, for that they both be the Kings Courts, (*1 Rich. 3. 4.*) and in such a case it is now usual to remove it. *Vide Fitz. 71. d.* Lamb 498.

But all writs of *Certiorari*, being to remove any inditement of forcible Entry, or Riot, or of assault and batterie, to be found before the Justices of Peace, shall now be delivered at some Quarter Sessions of the Peace, in open Court, &c. Statute 21 *Iacobi* cap. 8. See *hic antea tit. Forcible Entry, cap. 84.*

All the higher Courts at Westm. may write to the Justices of Peace to certifie their Records, that do make for the triall of causes depending in them, as you may read 19 *H. 6. 19.* where they of the Common Place did send to the Justices of Peace for an Indictment, because in a Writ of Conspiracy (brought or depending before them) it was materiall to have it. Lamb 577.

In some cases the Justice of Peace may certifie a Record (by him made, or found before him out of Sessions) without any Writ of *Certiorari* there fore to him directed. *Vide antea tit. Forcible Entry.*

In other cases he must of duty certifie his proceedings, but may spare to certifie the Record, untill a *Certiorari* come to him for it. See hereof *antea tit. Suretie for the Peace.*

For the manner of the Writ of *Certiorari*, to remove Records from one Court to another, or from the Justices of Peace or other officers of Record,



to any the higher Courts at Westm. &c. there are divers formes and sorts thereof, as you may see in *Fitz. Na. Br. fo. 242. &c.*

I will only set you down here one form for all, and so conclude.

The form of a *Certiorari* out of the Chancery, to certifie a Recognisance, taken by a Justice of Peace in the Country, for the keeping of the peace, &c.

F. N. B. 81. c.  
Cramp. 143.

**C**AROLUS Dei gratia Angliæ, Scotiæ, Franciæ, et Hiberniæ Rex, fidei defensor, &c. Custod. pacis nostr. in Comitatu Cant., & eorum cuilibet salutem: Volemus certis de causis *Certiorari*, super tenorem cujusdam securitatis Pacis, (vel boni gestus) quam A. P. Armiger, nuper invenit coram vobis, vel aliquo vestrum, de eo quod ipse dampnum vel malum aliquod R. S. aut alicui alii de populo nostro de corpore suo, nec faceret nec fieri procuraret quovismode: vobis mandamus, quod tenorem securitatis pacis (sive boni gestus) predict., nobis in Cancellar. nostr. in Octabis Purificat. beate Mariæ, prox. futur., ubicunque tunc fuerit, sub sigill. vestr., vel unus vestrum distincte & aperte sine dilacione mittatis, Et hoc sub pœna centum libr. nullatenus omittatis, nec aliquis vestrum omitat. Teste meipso apud Westmonast. die Novembris, anno regni nostri sexto.

The return hereof, See antea, tit. *Surety for the Peace*, cap. 73.

Nota quod Record ne ferra remove, nec per *Certiorare*, on Corpus cum causa *Fitz. Record. 3.*

Note also that upon a *Certiorari* to remove an Indictment of a Riot, or Forcible Entry, &c. the Return must have these words, *Necnon ad diversas Felonias, &c.* For if the Return mentions onely that they are Justices of the Peace, without the former words, *Necnon ad diversas felonias, transgress. & alia malefacta, &c.* according to the Commission, the Return is insufficient, 12 H. 7. 25. 2 R. 3. 9. Br. *Indictment. 32. 50.*

Also note that no *Certiorari* shall be granted to remove any Recognisance, except the same Writ be signed with the proper hand of the chiefe Justice, or (in his absence) of one of the Justices of that Court, out of which the same Writ shall be awarded

or made: Statute 1 & 2 Ph. &

M. cap. 14.

DEUS

*Minimis Magnus.*

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